

November 10, 2021 - 9 a.m. - 12 p.m.

FREE LIVE WEBINAR

Veterans & Military Affairs Annual CLE

Host: The West Virginia State Bar's Veterans & Military Affairs Committee

CLE: 3 general credits

Speakers/Topics:

(1) Victoria Gorby

Maximizing Veteran's Benefits with Effective Date Determinations and "Effective Representation of Total Disability based on Individual Unemployability (TDIU) claims."

(2) Justice Outreach Program Overview and Services: Dustin Holbrook & Amanda Rayburn, Department of Veterans Affairs Veterans Justice Outreach Specialists

(3) Veterans Treatment Court 101: Nicholas W. Leftwich, State Drug Court Coordinator



Victoria Rose Gorby was born in Bridgeport, West Virginia. Victoria graduated Cum Laude from West Virginia Wesleyan College with degrees in Chemistry, Biology, and Philosophy. Upon graduation, Victoria moved to Charleston, SC to attend the Charleston School of Law. In law school, she served as a student ambassador and did volunteer work through the Domestic Violence Clinic, the Charleston County Adult Guardianship Assistance and Monitoring Program, as well as a Volunteer Income Tax Assistance Program.

Soon after getting sworn into the Bar in 2016, she went to work for George Sink, P.A. Injury Lawyers to help with their Veterans Disability Law practice. She has been successful in helping over a thousand Veteran's maximum their VA disability benefits. Her practice area specializes in assisting with VA unemployability claims and in complex service connection claims - including Agent Orange cases and mental health cases, such as military sexual trauma and PTSD. She has represented Veteran's before the Regional Office and the Board of Veterans Affairs.

She is a member of the South Carolina Bar, the West Virginia Bar, the West Virginia Veterans and Military Affairs Committee, and the National Organization of Veterans Affairs. She was also a presenter at the 2020 West Virginia Day of Service CLE program. As the proud granddaughter of Bronze Star recipient, U.S. Army Master Sergeant Kenneth L. Gorby, she feels extremely fortunate to be able to help veterans just like him get the disability payments they deserve.



Effective Date Buffet

*Maximizing Veteran's
Benefits with Effective Date
Determinations*

By: Victoria Gorby, Esq.
November 2021

General Rule

- “Unless specifically provided otherwise in this chapter, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency or indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application.” 38 U.S.C. §5110(a)
- “The effective date is assigned based on the date of receipt of claim or the date entitlement arose, whichever is later.” 38 C.F.R. §3.400



The Basics: What is a Claim?

- A submission of an application form prescribed by the Secretary, whether paper or electronic, that:
 - provides the name of the claimant, and when applicable their relationship to the veteran;
 - sufficient information for VA to verify the claimed service
 - signature of the claimant or person authorized to sign for claimant;
 - identifies the benefit sought;
 - description of symptoms or medical conditions on which the benefit is based 38 C.F.R. §3.160(a)
- Prior to March 24, 2015, an informal claim was acceptable if it was a communication in writing that expressed an intent to apply for benefits, identified the benefits sought and was later memorialized within 1 year on an actual claim form



The Basics: Incomplete Claims

- When an incomplete initial claim is received, the VA shall notify the claimant of the information necessary to complete the application form. If a complete claim is submitted within 1 year of receipt of the incomplete application, VA will consider it as filed as of the date VA received the incomplete application 38 C.F.R. §3.155(c)
- However, for an incomplete supplemental claim, if a complete claim is received within sixty (60) days of notice by the VA, it will be considered filed as of the date the incomplete supplemental claim was received 38 C.F.R. §3.155(d)(1)(i)





The Basics: Date Entitlement Arose

Date entitlement arose is the date on which the facts in the case demonstrate that the entitling criteria are first met.

- See *Wright v. Gober*, 10 Vet.App. 343 (1997)

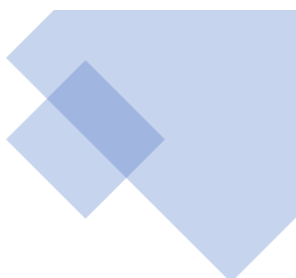

Determining Which is Later:

- Whether the date of the claim or the date entitlement arose is later is dependent on the date when the entitling criteria for the benefit sought was met.
- Assigning an effective date based on the date the entitlement arose being later than the date of receipt of the claim is only appropriate when the evidence clearly establishes that the entitling criteria was not met on the date the claim was received by VA.

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Exceptions:

The date of the claim and effective date are not synonymous. There are several factors which drive the effective date determination because in different scenarios the correct effective date differs from the date in which the claim was received. Thus, there are exceptions to the general rule.

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Exception 1: Intent to File

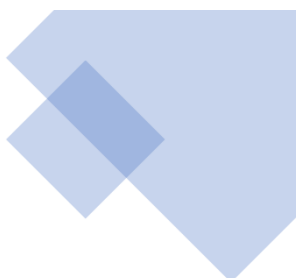

- A claimant, their duly authorized representative, Member of Congress or some person acting as next friend of claimant who is not of full age or capacity may indicate a claimant's desire to file a claim for benefits by submitting an *Intent to File* (ITF) to the VA by either:

1. saved electronic application; or
2. a VA Form 21-0966; or
3. orally communicated to designated VA personnel and recorded in writing on a VA Form 119


*See 38 C.F.R. §3.155(b) (2015)


- When a claim is submitted within one year of the ITF, the claim will be considered as filed as of the date of the receipt of the ITF.
 - Only one complete claim may be associated with each ITF although multiple issues may be contained on a single claim form.
 - Only the first claim filed will be associated with the ITF if there are multiple claims submitted within one year

*See 38 C.F.R. §3.155(d)(ii)



Exception 2: Disability within Scope of a Claimed Disability

- “[U]pon the filing of a claim for benefits, the Secretary generally must investigate the reasonably apparent and potential causes of the veteran's conditions and theories of service connection that are reasonably raised by the record or raised by a sympathetic reason of the claimant's filing”.
 - See *Shroederv. West*, 212 F.3d 1265, 1271 (Fed. Cir. 2000)
 - Whenever a disability is found within the scope of another expressly claimed disability after the sympathetic reading of a claim, the effective date is the date of receipt of the expressly claimed disability.
 - See 38 C.F.R. §3.155(d)(2)
- 



Exception 3: Claims received within one year of discharge

- For claims received more than one year after separation from service, the general effective date rules apply
- For claims received within one year of discharge from a period of active duty, the effective date is the day following separation from service provided there was continuous active service from the date the disability was incurred or aggravated 38 C.F.R. §3.400(B)(2)(i)
- When there are multiple periods of continuous service and the prior period of service was under conditions other than honorable, a character of discharge (COD) determination is needed




Exception 4: Hospitalization

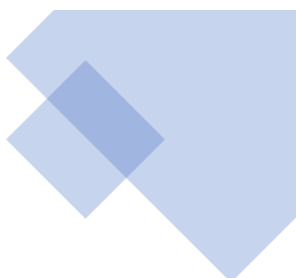

When a service-connected disabilities require hospitalization for a period in excess of 21 days, a temporary entitlement to a 100% rating will be assigned without regard to other provisions of the rating schedule with an effective date from the first day of the hospitalization.

*See 38 C.F.R. 4.29





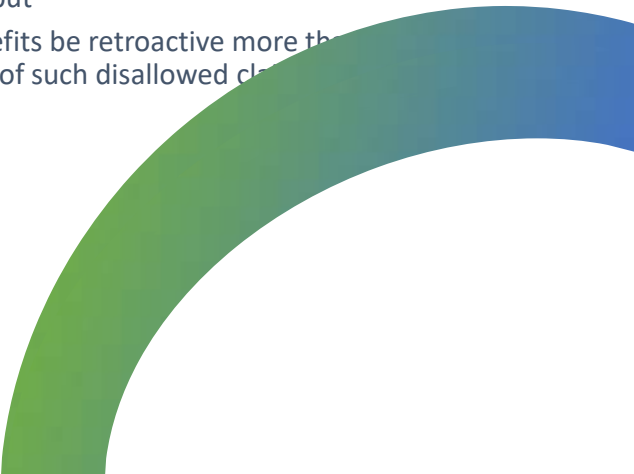
Exception 5: Increased Evaluation

- The effective date will be the earliest date it is factually ascertainable that the increase in disability occurred if a completed claim or ITF is received within 1 year from such date
 - Medical records may be used to establish effective dates for retroactive benefits based on facts found of an increase in a disability if a claim or ITF is received within 1 year of a report of examination, hospitalization or medical treatment
 - When increase in disability occurred more than one year prior to receipt of the claim, effective date would be the date of the claim.
 - See *Harper v. Brown*, 10 Vet. App. 125 (1997)
- 
- 




Exception 6: Correction of Military Records

Whenever any disallowed claim is readjudicated and thereafter allowed on the basis of new and relevant evidence resulting from the correction of the military records or the change, correction of modification of a discharge or a dismissal or from other corrective action by competent authority, the effective date shall be:

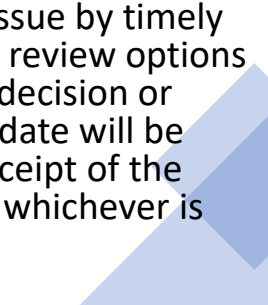
- date on which an application was filed for correction of the military record or discharge upgrade;
 - date the disallowed claim was filed; but
 - in no event shall such award for benefits be retroactive more than one year from the date of readjudication of such disallowed claim.
 - See 38 U.S.C. §5110(i); 38 C.F.R. §3.400(g)
- 

Exception 7: Additional Service Department Records

- “At any time after VA issues a decision on a claim, if VA received or associates with the claims file relevant service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim.”
 - See 38 C.F.R. §3.156(c)(1)
- “An award made based all or in part on additional service records is effective on the date the entitlement arose or the date VA received the previously decided claim, whichever is later or any other date authorized.”
 - See §38 C.F.R. §3.156(c)(3)




Exception 8: Continuously Pursued Issues and/or Claims

- A claimant may continuously pursue a claim by timely filing one of the administrative review options after any decision by the agency of original jurisdiction, Board of Veterans' Appeals ("Board") or by the U.S. Court of Appeals for Veteran's Claims ("CAVC") provided that any appeal to the court is timely filed as determined by the court. See 38 C.F.R. §3.2500(c)
 - following an initial or supplemental claim –file a claim, request for a higher-level review or appeal to the Board. See 38 C.F.R. §3.2500(c)(1)
 - following a higher-level review –supplemental claim or appeal to the Board. See 38 C.F.R. §3.2500(c)(2)
 - following a Board decision –file a supplemental claim or notice of appeal to CAVC. See 38 C.F.R. §3.2500(c)(3)
 - following a CAVC decision –file a supplemental claim. See 38 C.F.R. §3.2500(c)(4)
 - If a claimant continuously pursues an issue by timely filing in succession any of the available review options within one year of the issuance of the decision or timely received by CAVC, the effective date will be fixed in accordance with the date of receipt of the initial claim or date entitlement arose, whichever is later
 - See 38 C.F.R. §3.2500(h)
- 



Exception 9: Liberalizing Legislation

- Substantive change in the law creating new and different entitlement to a benefit.
 - When a claimant is granted an award due to a liberalizing law which became effective on or after the date of its enactment, in order for a claimant to be eligible for retroactive payment the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law and that such eligibility existed continuously from that date to the date of the claim or rating decision.
 - See 38 C.F.R. §3.114(a)
- 

Why are effective
dates so important?





Questions?

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A soldier in a camouflage uniform is shown from the back, saluting with his right hand. He is positioned in front of a large American flag. The flag's stars and stripes are clearly visible. A dark blue rectangular box is overlaid on the bottom portion of the image, containing white text.

“EFFECTIVE REPRESENTATION OF TOTAL DISABILITY BASED ON INDIVIDUAL UNEMPLOYABILITY (TDIU) CLAIMS.”

BY: VICTORIA R. GORBY, ESQ.
NOVEMBER 2021



Service connection means that the veteran is disabled due to injury or illness that was incurred in, caused by, secondary to, or aggravated by military service.

BASIC INTRODUCTION TO VA DISABILITY BENEFITS

COMBINE RATINGS

-
- VA combines ratings – this is **different** than adding
 - The rating the VA assigns to each disability is supposed to represent the “average detriment to earning capacity” resulting from that disability. So if the VA gives a veteran a 50% PTSD rating, they are stating that 50% of his earning capacity has been affected due to his PTSD and 50% of him is still fully efficient.

MONTHLY TAX-FREE COMPENSATION RATES:

0%-20% = no dependency pay awarded

Note: If you have a 10% to 20% disability rating, you won't receive a higher rate even if you have a dependent spouse, child, or parent.

Disability rating	Monthly payment (in U.S. \$)
10%	144.14
20%	284.93

30%-100% = eligible for additional dependency pay

WITHOUT CHILDREN	30%	40%	50%	60%	70%	80%	90%	100%
Veteran Alone	441.35	635.77	905.04	1,146.39	1,444.71	1,679.35	1,887.18	3,146.42
Veteran With Spouse Only	493.35	705.77	992.04	1,251.39	1,566.71	1,819.35	2,044.18	3,321.85
Veteran With Spouse and One Parent	535.35	761.77	1,062.04	1,335.39	1,664.71	1,931.35	2,170.18	3,462.64
Veteran With Spouse and Two Parent	577.35	817.77	1,132.04	1,419.39	1,762.71	2,043.45	2,296.18	3,603.43
Veteran With One Parent	483.35	691.77	975.04	1,230.39	1,542.71	1,791.35	2,013.18	3,287.21
Veteran With Two Parents	525.35	747.77	1,045.04	1,314.39	1,640.71	1,903.35	2,139.18	3,428.00
Additional for A/A Spouse *	48.00	64.00	81.00	96.00	113.00	129.00	145.00	160.89
WITH CHILDREN	30%	40%	50%	60%	70%	80%	90%	100%
Veteran With Child Only	476.35	681.77	963.04	1,216.39	1,526.71	1,772.35	1,992.18	3,263.74
Veteran With Spouse and Child	532.35	756.77	1,056.04	1,328.39	1,656.71	1,922.35	2,160.18	3,450.32
Veteran With Spouse, One Parent and Child	574.35	812.77	1,126.04	1,412.39	1,754.71	2,034.35	2,286.18	3,591.11
Veteran With Spouse, Two Parents and Child	616.35	868.77	1,196.04	1,496.39	1,852.71	2,146.35	2,412.18	3,731.90
Veteran With One Parent and Child	518.35	737.77	1,033.04	1,300.39	1,624.71	1,884.35	2,118.18	3,404.53
Veteran With Two Parents and Child	560.35	793.77	1,103.04	1,384.39	1,722.71	1,996.35	2,244.18	3,545.32
Add for Each Additional Child (Under the Age of 18)	26.00	34.00	43.00	52.00	61.00	69.00	78.00	87.17
Each Additional Schoolchild (Over the Age of 18)	84.00	112.00	140.00	168.00	197.00	225.00	253.00	281.57
Additional for A/A Spouse *	48.00	64.00	81.00	96.00	113.00	129.00	145.00	160.89



WHAT'S SO SPECIAL ABOUT UNEMPLOYABILITY CLAIMS?

- It is very hard to get a combine 100% rating
- TDIU claims are another route to get to 100%

BASIC ELIGIBILITY FOR TDIU CLAIMS:

- 38 C.F.R. § 4.15: “Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the *average* person to follow a *substantially gainful occupation*...”
- 38 C.F.R. § 4.16(a): Schedular TDIU is warranted when one disability is 60 percent disabling or two or more disabilities are combined at 70 percent (with at least one disability at 40 percent disabling)
 - Several service connected disabilities can be considered “one disability” if they are the result of one common cause or event or effect a single body system

WHAT IS SUBSTANTIALLY GAINFUL EMPLOYMENT:



- Two components:
 - 1) Economic component: employment that is more than “marginal”
 - 2) Noneconomic component: assessing the *ability* to work more than marginal employment, addressing:
 - employment history, education, skills, training
 - physical ability to perform work (lifting, bending, sitting, standing, etc.)
 - mental ability to perform work (memory, social functioning, ability to handle stress, etc.)
- TDIU Framework: *Ray v. Wilkie*, _ Vet. App. _ slip op, at 16-17, No. 17-0781 (March 14, 2019)

- To apply for TDIU, you must complete VA Form 21-8940, Veteran's Application Based on Unemployability.
- The form requires you to provide the following information:
 - Your Social Security Number;
 - Your VA file number;
 - Your employment history going back five years *from your last date of employment*(e.g., if your last date of employment was January 1, 2013, your employment history must go back five years before that);
 - Your education, training, certifications, and job skills obtained before you became disabled;
 - Any training you received after you became disabled;
 - Your date of disability;
 - Any treatment you have received;
 - Any hospitalizations during the previous 12 months; and
 - How your disability prevents you from securing and maintaining substantially gainful employment.

HOW TO APPLY FOR TDIU

COMMON ISSUE #1: VETERAN IS “WORKING” IN SOME CAPACITY

- First, assess whether a Veteran is working
 - Volunteer ≠ Work
 - If working, can Veteran “maintain” the job
 - **Development: Obtain SSA Earnings Report
- Next, determine whether this work is “gainful”
 - Compare earnings with poverty threshold tables for one individual (2019 = \$12,490)
 - If “gainful”, evaluate for “protected” employment
 - **Development: Statements from supportive boss or co-worker; employment records showing need for accommodations

Case law for marginal/protected employment: *Ortiz-Valles v. McDonald*, 28 Vet. App. 65 (2016); *Moore v. Derwinski*, 1 Vet. App. 356 (1991); *Cantrell v. Shulkin*, 28 Vet. App. 382 (2017)

COMMON ISSUE #2: VETERAN CAN WORK “SEDENTARY” EMPLOYMENT

- *Withers v. Wilkie*, 30 Vet. App. 139 (2018): VA must consider the meaning of sedentary employment based on a Veteran’s “overall disability picture and vocational history.”
- Apply the same individualized inquiry:
 - Veteran’s employment history
 - Veteran’s education and transferable skills
 - Does Veteran have the ability to work more than “marginal” employment (physical and mental impairment)?
 - **Development: Lay statements showing the need for frequent breaks and difficulty sitting for long periods of time; Medical records showing pain while sitting for long periods of time; A Medical Report and/or Vocational Report which is based on a review of the record

COMMON ISSUE #3: NON-SERVICE CONNECTED CONDITIONS PREVENT EMPLOYABILITY

- *Pratt v. Derwinski*, 3 Vet. App. 269 (1992): “The Board is still required to decide, without regard to nonservice connected disabilities or the veteran’s age, whether his service connected disabilities are sufficiently incapacitating as to render him unemployable. So, in theory, he may be unemployable as a result of both service-related and non-service related factors, but only the handicap attributable to the service-related factors can support a claim for TDIU.
- **Development: Medical evidence showing the service connected disability, alone, prevents gainful employment; Obtain a private Vocational Expert Assessment (with interview and file review).

COMMON ISSUE #4: VETERAN DOESN'T SATISFY THE SCHEDULAR CRITERIA FOR TDIU

- 38 C.F.R. §4.16(a): Scheduling TDIU is warranted when one disability is 60 percent disabling or two or more disabilities are combined at 70 percent (with at least one disability at 40 percent disabling)
 - Remember that for the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, (2) disabilities resulting from common etiology or a single accident, (3) disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric, (4) multiple injuries incurred in action, or (5) multiple disabilities incurred as a prisoner of war.
 - **Development: Look into rationale provided for service connection for each condition (i.e., why was service connected granted) to see if any “one disability” arguments can be made
- 38 C.F.R. §4.16(b): Extraschedular consideration: “It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, **rating boards should submit to the Director, Compensation Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section.** The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.
 - For 4.16(b) need to show veteran is unable to obtain AND maintain employment
 - **Development: Get statements from veteran, family members, past co-workers/bosses regarding impact of conditions on ability to work. Find medical records indicating problems working due to service connected conditions. Obtain Vocational Assessment Report. Check earning history, time lost from work.

REVIEW: DEVELOPING FOR TDIU ARGUMENTS

- Is the Veteran able to obtain and maintain employment?
 - If yes, is the employment “gainful”?
 - Check earnings history; time lost from work; need for accommodations; understanding bosses
- Can the Veteran perform the physical and mental acts of gainful employment?
 - Focus arguments on the individual facts of this case: Veteran’s employment, education, and skills
 - Develop evidence highlighting impairments caused by service connected disabilities (lay statements, employment records, medical/vocational reports)
- Write for your audience: Keep it simple
 - Identify when Veteran stopped working gainful employment
 - Highlight strongest evidence showing the Veteran cannot work due to service connected disabilities
 - Include relevant case law discussion as necessary

QUESTIONS?



■ vgorby@sinklaw.com

Personal Summary

An experienced and fully qualified social worker who is efficient, thorough and passionate about delivering the best levels of care to clients. Possessing extensive experience in various therapeutic and case management settings, including children, families and Veterans. Always striving to expand upon clinical skills and interventions.

Career History

Veteran's Justice Outreach Specialist
VA Medical Center, June 2014-Present

Duties

- Advocate for Veteran's to avoid unnecessary criminalization of mental illness and extended incarceration among Veterans.
- Ensure that eligible, justice-involved Veterans have timely access to Veterans Healthy Administration services, as clinically indicated.
- Provide direct outreach, assessment and case management for justice involved Veterans in local courts and jails and liaison with local justice system partners.
- Maintain liaison with civilian, military and VA resources and coordinating social services for population served.

Adjunct Professor, Health and Behavioral Assessment
WV State University, January 2008-Present

New Horizons Therapy Services
Therapist, March 2013-September 2015

Charleston Area Medical Center
Medical Social Worker, May 2012-January 2014

Key Skills

- Effective communicator.
- Provide Integrative Behavioral Couple Therapy and Prolonged Exposure Therapy.
- Excellent organizational skills.
- Ability to analyze and interpret information to plan appropriate interventions.
- Implement Client Centered Care.

Academic Qualifications

WV State University, 2001-2005
West Virginia University, 2009-2012

Certifications:

LICSW, Prolonged Exposure Therapy, and Integrative Behavioral Therapy

Nicholas William Leftwich

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Nitro, West Virginia 25143-7235
nicholas.w.leftwich@gmail.com

Education

Master's Degree in Legal Studies,

Graduated with a 3.76 GPA

West Virginia University, Morgantown, WV

Aug. 2012 to Dec. 2015

Master's Degree in Criminal Justice

Graduated with 3.729 GPA

University of Cincinnati, Cincinnati, OH

Jan. 2009 to Dec. 2010

B.S. Degree in Criminal Justice;

Graduated Magna Cum Laude with 3.62 GPA

Aug. 2004 to May 2008

West Virginia State University, Institute, West Virginia

- President, Criminal Justice Honor Society – Alpha Phi Sigma Fall 2007 – Spring 2008
- President, Alpha Kappa Mu, Alpha Delta Sigma Chapter, Honor Society.

Career History and Accomplishments

State Drug Court Coordinator

West Virginia Supreme Court of Appeals

Sept. 2017 to Present

- Programmatically and financially oversee state's adult and juvenile drug court programs
- Expand specialty courts throughout West Virginia
- Provide technical assistance to drug court programs, treatment teams, Judges, and other community-based stakeholders
- Attend all drug court graduations and serve as a representative of the WV Supreme Court of Appeals as a speaker.
- Maintain all drug court data for the purposes of quality assurance, annual reports, and/or federal statistics.
- Research and apply for federal and state grants to supplement drug court programs
- Serve as a liaison for probation circuits for sex offender supervision technical assistance.

Intensive Supervision Probation Officer

West Virginia Supreme Court of Appeals

Sept. 2012 to Sept. 2017

- Supervised Adult and Juvenile Sex Offenders in 8 West Virginia Counties
 - Offenders were either on Probation and/or Extended Supervised Release
 - Conduct Home, Employment, Field, School, and/or Field Visits with probationers

- Conducted Risk/Needs Assessments, both adult and juvenile, on Offenders to determine case plans
- Collaborated with Chief Probation Officers and Circuit Judges to ensure proper communication was maintained for effective supervision of cases.
- Made referrals for offenders to community agencies for the goal of substance abuse treatment, employment, therapy, etc.
- Compiled and filed written petitions to revoke probation, amend probation terms, etc.
- Testified in Revocation Hearings and offered assistance to both Judges and Prosecutors
- Drug Screened offenders under supervision
- Facilitated offender transfer process via Interstate Compact Transfer for offenders to reside in other states while under supervision

Nov. 2008 to Sept. 2012

Criminal Justice Specialist III

West Virginia Division of Justice and Community Services

- Administered Federal and State funding, via awarding processes, to various state, county, local, and non-profit agencies which include:
 - Victims of Crime Act (VOCA), Violence Against Women Act (VAWA), Enforcing Underage Drinking Laws Grant (EUDL), Juvenile Accountability Block Grant (JABG), Juvenile Justice and Delinquency Prevention (JJDP) Titles II & V, Child Advocacy Center State Funds, and West Virginia Community Corrections (Day Report Centers) State Funds.
- Maintained over 40 grant-funded initiatives, of varying disciplines, via concise project management
- Travel across all 55 West Virginia Counties to provide technical assistance and site-visit monitoring to various entities ranging from law enforcement and probation to local non-profit organizations.
- Meet and discuss program development with law enforcement, judicial agents, State agencies, local domestic violence and sexual assault help centers, County Commissions, prosecutors, faith-based organizations, etc.
- Coordinate and facilitate multi-disciplinary team meetings on State, County, and municipal levels to provide for program enhancement.
- Coordinate, facilitate, and staff meetings to the West Virginia Community Corrections Sub-Committee and the West Virginia State Advisory Group (SAG); both sub-committees are part of the WV Governor's Full Committee on Crime, Delinquency, and Correction.
- Provide training to state, county, and local criminal justice agencies on best practices for program growth and successful program outcomes.
- Coordinated, facilitated, and wrote Legislative Rules on Law Enforcement Response to Stalking for the State of West Virginia: 149CSR7 (2014)

Professional Trainings

- LS/CMI and YLS/CMI trained

- Certified in Drug Screening and Intoximeter
- Completed 72 hours in Personnel Management Training from the West Virginia Division of Personnel. Various topics include: Supervisory Courses, Workplace Safety, Conflict Resolution, etc.
- Firearms Certification from West Virginia State Police, October 2015
- Certified in Motivational Interviewing
- Certified in Officer Safety
- Certified in Interstate Compact Offender Tracking System (ICOTS) and Interstate Commission for Adult Offender Supervision (ICAOS)

Activities

- Board Member, West Virginia Family Protection Services Board (June 2010-Jan. 2013).
Board Tasks included:
 - Provide training to all 13 statewide domestic violence programs in areas of victim safety and program development, which include hiring and training competent staff, maintaining a safe facility, and licensure
 - Monitored all 13 domestic violence programs on site to provide technical assistance for effective victims services and program growth
 - Reviewed and critiqued licensure applications annually for all statewide domestic violence programs, Batterer Intervention and Prevention programs (BIPPS), and Monitored Parenting and Exchange Programs (e.g. – visitation programs)
 - Financial steward of the West Virginia Family Protection Fund, which provides funding to all statewide domestic violence programs
- Co-Chair, West Virginia Victim Assistance Academy Governing Advisory Committee (2010-2011)
- Vice-Chair, West Virginia Community Corrections Sub-Committee for the Governor's Committee on Crime, Delinquency and Correction
- Member, Golden Key Graduate School Honor Society
- Member, National Criminal Justice Honor Society (2004-2008)
 - President (2007-2008)
- Member, National Honor Society (2004-2008)
- Little League Baseball Coach
- Vice-President, North Putnam Little League, Putnam County, WV
- Youth Leader, Poca Baptist Church in Poca, West Virginia (2014-Present)
- Ordained Deacon in the Baptist faith



UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS

Hershel "Woody" Williams VAMC

Veteran's Justice Outreach

Dustin Holbrook, MSSA, LISW-S, LICDC-CS

Amanda Rayburn, MSW, LICSW

Kimberly White, MSW, LICSW

Our Mission: Together, we honor and serve America's Veterans.

Our Vision: To be a trusted and resilient partner for Veterans, offering readily available, safe and compassionate care of exceptional quality within an integrated system.





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VA Eligibility requirements

- VA benefits eligibility is based on

- Amount of time served in the military
 - 24 consecutive months
 - Service-connected disability
 - Served in combat zone
- Character of discharge
 - Honorable and some General discharges

- Application Process

- Identify VAMC for visit to primary care
- Complete VA Form 10-10EZ
- Submit 10-10EZ to VA Enrollment Specialist
- Additional Questions: Call 1-877-222-VETS (8387) or visit www.va.gov

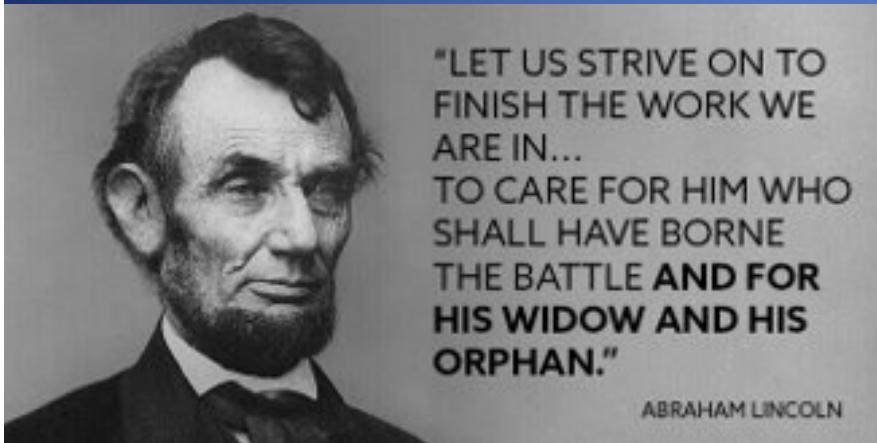
For Benefits information & assistance call : 1-800-827-1000 or visit www.va.gov



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VA Healthcare

- Medical care
 - Care for Men and Women
- Mental health (residential and outpatient)
 - Specializes in suicide prevention
 - PTSD/trauma Clinic
 - TBI screening
 - Substance Abuse Treatment
 - Suboxone Treatment Program
 - Military Sexual Trauma
 - Cognitive Behavioral Therapy (CBT)
 - Peer Support
 - Family/ Couples Therapy
 - Compensated Work Therapy Program
- Homeless Veterans Resource Center
 - Housing Assistance
 - Veterans Justice Outreach





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Veterans Mental Health

Range of VA Mental Health Resources-

- Emergency and Inpatient
- Outpatient and Day Treatment
- Pharmacotherapy
- Specialty (e.g. PTSD)

VA
HEALTH
CARE

Defining
EXCELLENCE
in the 21st Century

Range of VA Addiction Treatment (Tx) Resources-

- Withdrawal Management (inpatient or ambulatory detox)
- Residential Rehabilitation
- Intensive Outpatient Treatment
- Opioid Treatment Programs
- Outpatient Continuing Care for Relapse Prevention

[all settings provide medication assisted and psychosocial treatments]



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Combat Specific Stressors

Soldiers returning from Iraq:

95% observed dead bodies or human remains

93% were shot at, or received small arms fire

89% were attacked or ambushed

65% observed injured or dead Americans

48% were responsible for the death of an enemy combatant

VA PTSD Resources

PTSD Clinical Teams (Outpatient)

Residential

Pharmacotherapy

Vet Centers

Veteran Peer Support





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TRAUMATIC BRAIN INJURY

- Around 15-20% OEF/OIF veterans meeting criteria for TBI
- Between January 2003 and March 31, 2008, DVBIC military, VA and civilian sites combined have seen a total of 6,602 patients with TBI. (DVBIC, 2008)

Symptoms associated with moderate/severe TBI

Emotional-irritability, dysregulation, lack of range

Cognitive-short term memory, attention, info processing, word finding, executive functions

Behavioral-impulsivity, disinhibition, apathy



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Routine Readjustment Stress

Family Changes and Dynamics

Job Challenges

Friendship/Comrade Changes & Challenges

BATTLEMIND – behaviors and practices that were adaptive and helpful during deployment may be hard to unlearn



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Addiction Co-morbidity



- Self-medication common with untreated conditions

- PTSD
- Depression
- TBI

- Prescription painkiller abuse common for treated injuries



- Alcohol most widely abused substance
- Illegal drugs – more potent, riskier behavior
- Prescription drugs – widely used in the military, not well supervised





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VETERANS JUSTICE OUTREACH (VJO)

- The VJO initiative coordinates with local criminal justice to avoid extended incarceration and provide treatment of mental illness and substance use disorder (SUD) among Veterans. VJO specialists are at every Veterans Administration Medical Centers.
- VJO specialists assist in determining eligibility for VA benefits
- Case management for veterans participating in VJO program
- Advocates for veterans
- Provides training for local justice team members
- Assists finding other VA and community assistance



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What VJO can assist with:

- Reach out to law enforcement, jails, and courts
- Provide comprehensive healthcare services
- With Veteran consent, communicate essentials (attendance, progress, tx testing, d/c plan)
- Serve all veteran eras
- Function as court team member
- Assess veteran's healthcare needs, identify appropriate VA and non-VA services
- Refer and link veteran to services
- Provide EBT for court-monitored veterans
- Assist with criminal charges



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What VJO cannot assist with:

- Write lengthy court reports or complete Diversion paperwork
- Decide criminal justice criteria for veteran court participation or decide who gains admission to specialty treatment court
- Perform forensic psychiatric or psychological evaluation for the court
- Do Diversion Programming, accept custody
- Guarantee program acceptance
- Advocate for legislation
- Serve VHA ineligible Veterans
- Assist with non-criminal charges
- Leap buildings in a single bound



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Limits on VA Authorization

- Title 38 CFR 17.38 does not allow VHA to provide hospital and outpatient care for a Veteran who is:
 - Either a patient or inmate in an institution of another government agency as that agency assumes the duty to provide care or services needed for the veteran
- VA does not assume custody of a Veteran
 - ALL VA Services are Voluntary unless the Veteran is actively suicidal or homicidal



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Defining Justice-Involved Veterans

- A justice-involved Veteran is:
 - A Veteran in contact with local law enforcement who can be appropriately diverted from arrest into mental health or substance abuse treatment;
 - A Veteran in a local jail, either pre-trial or serving a sentence; or
 - A Veteran involved in adjudication or monitoring by a court
- Related issues
 - Veterans charged with non-violent crimes are the priority population of this initiative
 - Reentry for Veterans being discharged from State and Federal Prisons
 - Applies to veterans from all eras of conflict



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Justice-Involved Veterans

- Bureau of Justice Statistics data, indicates 9.3% of people incarcerated are Veterans.
- Justice-Involved Veterans who were in combat: 20%
- Positive for physical/sexual abuse: 21%
- Homeless year prior to arrest: 18%
- Arrested for nonviolent crime: 70%
- 45% had served two or more prison sentences
- Most common diagnosis is Polysubstance Dependence
- Applies to veterans from all eras
- Average age: 43
 - “... Having any type of health condition-physical, mental, or substance abuse- was associated with either engaging in more criminal activity or having a higher likelihood of re-incarceration.”
Malik-Kane and Visser, 2008



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Justice-Involved Veterans

- Justice-Involved Veterans have unique medical needs (physical and psychiatric)
- 50% report psychiatric symptoms 1:6 with a MH diagnosis received MH treatment
- 10-15% have attempted suicide (greater risk of suicide during immediate release period)
- 29% of Veterans in the Criminal Justice System Has a Dual Diagnosis of PTSD, Depression, Bipolar Disorder, Anxiety Disorders, and Substance Abuse Disorder
- 50% report drug use in month prior to offense
- 25% report use during crime
- 43% Alcohol dependent
- Physical problems
- Top 5 are high blood pressure, arthritis, cardiac, hepatitis and asthma
- Chronic pain (narcotic pain medication issues)



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Justice-Involved Veterans

- In 2018, Justice Department's Bureau Justice Statistics state an estimated 181,500 veterans are incarcerated including 131,500 in prison and 50,000 in jails. This figure decreased 9% from the 206,500 veterans incarcerated in 2004.
- An estimated two-thirds of veterans in prison (67%) and jail (66%) were discharged from military service between 1974 and 2000.
- More likely to be white (50% in prison and 44% in jail), older (average age is 49 in prison and 43 in jail) and more educated (20% of veterans in prison and 18% in jail hold at least a college degree versus 5% of non-veterans)
- 23% have PTSD and/ or other mental health diagnosis.
- From 2001 – 2012, veterans discharged during Operation Enduring Freedom (Global War on Terrorism), Operation Iraqi Freedom and Operation New Dawn (Afghanistan) accounted for 13% of veterans in prison and 25% of veterans in jail.
- More than likely to have violent offenses.

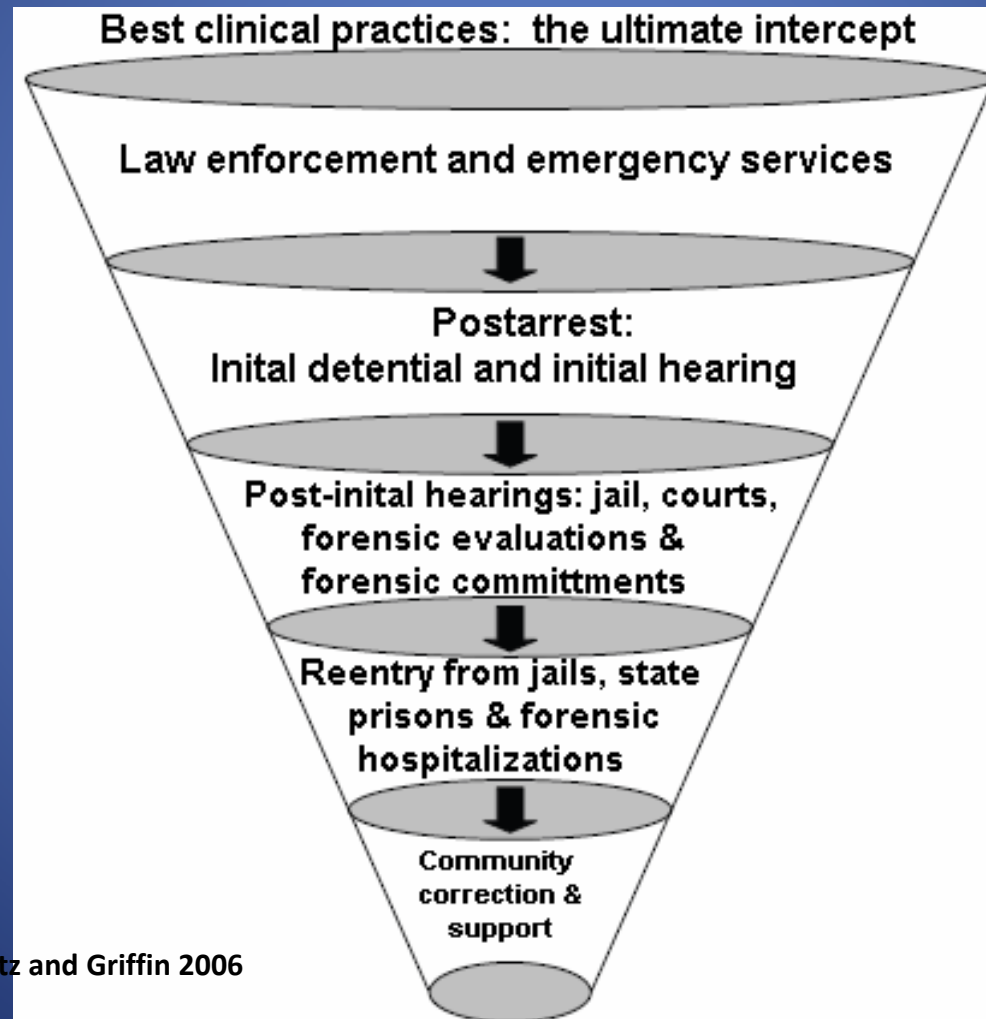


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MH Sequential Intercept Model

Focus of VJO --
Intercept
Points
1, 2, 3,5

Focus of
HCRV --
Intercept
Point 4



Intercept Point 1

Intercept Point 2

Intercept Point 3

Intercept Point 4

Intercept Point 5



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VJO Referral Process

1. Receive referral from VA staff, jail, judge, attorney, Veteran, family member, etc.
2. Contact Veteran to obtain brief description of legal issues.
3. If appropriate, arrange assessment with VJO.
4. Provide case management and link with VA resources.
5. Attend court hearings (if in Veteran's Court), remain in contact with Veteran's attorney, provide treatment summaries as requested by Veteran and/or court.
6. Assist Veteran with linking Veteran to resources to ensure success after legal charges are resolved.



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Veterans Treatment Court

The veterans Treatment Court multidisciplinary team is comprised of highly qualified individuals who will work closely with participants during the program.

This team includes:

- Judge
- Prosecutor
- Defense Attorney and Public defender/Private Attorney
- Probation Officer/Day Report/Home Confinement
- Veterans justice Outreach Specialist
- Treatment Providers and Community Providers

According to John Rowan, president of Vietnam Veterans of America, "veteran's courts have done a great job of keeping veterans out of jail and the population (of those incarcerated) is shrinking."



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Services Needed by Veterans After Release

- Medical
- Mental Health
- Substance Abuse
- Vocational and Employment
- Veterans Benefits Assistance
- Transitional Housing-

Homelessness Risk

- Incarceration as an adult male is the single highest risk factor of **ever** being homeless
- Lengthy periods of incarceration in remote locations often attenuate the social and family ties that are crucial for successful reentry into the community
- Even short-term incarcerations may disrupt lives and interfere with the ability to maintain employment and housing



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Veteran's Justice Programs Impact

Health Care for Re-Entry Veterans 2006-2015

- 93% linking justice-involved veterans to mental health treatment within 1 year of contact
- 57% linking justice-involved veterans to substance abuse treatment within 1 year of contact

Veteran's Justice Outreach (VJO) 2010-2015

- 95% linking justice-involved veterans to mental health treatment within 1 year of contact
- 69% linking justice-involved veterans to substance abuse treatment within 1 year of contact



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VJO Contact Information

Hershel "Woody" Williams VA Medical Center , Huntington WV

VJO Specialists:

Dustin Holbrook: 304-429-6755 X4627

Email: Dustin.Holbrook@va.gov

Kimberly White Phone: 304-429-6755 X 4617

Email: Kimberly.White3@va.gov

VJO Specialist: Amanda Rayburn

Phone: 304-429-6755 x 4619

Email: Amanda.Rayburn@va.gov

West Virginia Counties: Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo Putnam and Wayne

Ohio Counties: Lawrence, Gallia

Kentucky Counties: Boyd, Carter, Elliott, Floyd, Johnson, Greenup, Lawrence, MaGoffin, Knott, Pike, Martin and Lewis

VJO Contact Information

Beckley VA Medical Center

- VJO Specialist: Jackie Hartsog Phone: 6304-673-9183 Email: Jacqueline.e.hartsog@va.gov
- WV Counties: Clay, Fayette, Greenbrier, McDowell, Mercer, Monroe, Nicholas, Pocahontas, Raleigh, Summers, and Wyoming

Martinsburg VA Medical Center

- VJO Specialist: Dave Gowers Phone: 304-263-0811 extension 4548 Email: David.Gowers@va.gov
- WV Counties: Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan and Pendleton

Clarksburg, WV Louis A. Johnson VA Medical Center

- VJO Specialist: Jeanie O'Halloran Phone: 304-623-3461 Email: Jean.Ohalloran@va.gov
- WV Counties: Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Pleasant, Preston, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt and Wood

National VJO locator

- www.va.gov/homeless/vjo.asp#contacts

VA's National Suicide Hotline

1-800-273-TALK (8255)



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Thank You For Serving our Nations Veterans

