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## LEGAL NEEDS OF MILITARY VETERANS, SERVICEMEMBERS, AND THEIR FAMILIES

Legal Services and Protections  
Servicemembers Civil Relief Act  
Military Service and Family Law  
Pro Bono Attorneys and Family Law  
Military Child Care  
Veteran Status and Monetary Benefits  
Representing Veterans  
Veterans Benefits Advocacy

Fleeing-Felon Rules  
Immigration Issues  
Sexual Harassment  
Uniformed Services Employment  
and Reemployment Rights Act  
Homelessness  
Transitional Jobs  
Veterans Benefit Projects

# Helping Veterans OVERCOME Homelessness

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“**A**braham,” we’ll call him, was a combat veteran previously attached to the 173d Airborne. He made it through firefights well enough but was never able to reconcile the destruction that he had witnessed in warfare.

For years, Abraham moved from shelter to shelter, trying to overcome painful addictions and memories of war. Without housing and a source of income, however, Abraham remained stuck in the vortex that is homelessness.

Abraham, unlike most homeless veterans, was finally able to locate someone who helped him obtain the benefits that he needed. Within five months of retaining competent advocacy, Abraham was awarded enough retroactive and monthly U.S. Department of Veterans Affairs (VA) benefits to find suitable housing.

Abraham soon moved to a little hamlet in South Carolina and eventually found the courage to reunite with lost loved ones. Sadly, however, years of surviving poverty and addiction took its toll on Abraham’s frail body. Within months of finally leaving behind decades of poverty, Abraham died suddenly due to complications from respiratory failure.

If Abraham had retained advocacy decades earlier, “life” undoubtedly could have happened sooner. Countless more veterans face the same challenges as Abraham. Veterans make up about 10 percent of the U.S. adult general population but perhaps as much as one-third of the adult homeless population.<sup>1</sup> Veterans are twice as likely as the general population to become chronically homeless.<sup>2</sup> Moreover, the National Alliance to End Homelessness estimates that from ninety thousand to one-half million

<sup>1</sup>See U.S. Census Bureau, 2005–2007 American Community Survey 3-Year Estimates, <http://bit.ly/3czPjA> (“Selected Social Characteristics in the United States: 2005–2007”); U.S. Department of Veterans Affairs, Overview of Homelessness (reviewed/updated July 15, 2009), <http://www1.va.gov/homeless/page.cfm?pg=1> (estimated one-third of U.S. homeless populations are veterans).

<sup>2</sup>National Coalition for Homeless Veterans, Homeless Veterans Fact Sheet 1 (n.d.), [www.nchv.org/docs/HomelessVeterans\\_factsheet.pdf](http://www.nchv.org/docs/HomelessVeterans_factsheet.pdf).

additional veterans are at risk of homelessness.<sup>3</sup> These troublesome figures will probably increase as the 1.7 million troops deployed to Iraq and Afghanistan return—many of them suffering from multiple service-related physical and psychological wounds and needing services.

Now more than ever we must ensure that our most vulnerable veterans are connected with the resources that they need to escape and avoid homelessness. Such a task will take effort and innovation from all facets of our society, including government agencies, nonprofit organizations, and the courts. In this article we present information that we hope will create a strong foundation for those efforts.

First, we give an overview of homeless veterans—who they are, how many there are, and why they become homeless. We then discuss some resources that can help veterans achieve financial stability and access supportive housing so that they can stay off the streets and lead healthy, productive lives. In the last section we advocate greater availability of two innovative legal programs—alternative sentencing statutes and veterans courts—to link at-risk veterans to potentially life-saving treatment and lower their risk of homelessness.

In our discussion we recommend key changes that will help these resources and programs better serve homeless and at-risk veterans. And we honor a great American president, Abraham Lincoln, when he said:

With malice toward none; with charity for all; with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care

for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.<sup>4</sup>

## I. Overview of Homeless Veterans

Before we can discuss how to overcome homelessness among veterans, we must first put a face on the problem. To that end, in this section we get to know our homeless veterans: who they are, how many there are, and what causes them to be homeless.

### A. Who Are They?

A “homeless veteran” is, of course, someone who is both “homeless” and a “veteran,” two terms that are defined separately by federal law.

The Stewart B. McKinney Homeless Assistance Act, which controls federal funding for homeless programs, defines a “homeless person” as someone who either lacks a fixed, regular, and adequate nighttime residence or has a primary nighttime residence that is (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.<sup>5</sup>

Federal law defines a “veteran” as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”<sup>6</sup>

<sup>3</sup>Mary Cunningham et al., National Alliance to End Homelessness, *Vital Mission: Ending Homelessness Among Veterans 25–27* (2007) (“at risk” households are those below poverty level and paying more than 50 percent of household income on rent or those that include person with disability, person living alone, or person not in labor market (citing American Community Survey 2005)).

<sup>4</sup>President Abraham Lincoln, Second Inaugural Address (March 4, 1865), reprinted in *Inaugural Addresses of the Presidents of the United States*, S. Doc. No. 101-10 (1989) (inaugural address also available online at [www.bartelby.org/124/pres32.html](http://www.bartelby.org/124/pres32.html)).

<sup>5</sup>Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11302.

<sup>6</sup>38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d) (2008).

According to an Urban Institute study, 47 percent of homeless veterans served in the Vietnam era from August 1964 to May 1975, 32 percent served from May 1975 to August 1980, 17 percent served from September 1980 to July 1990, and 15 percent served from February 1955 to July 1964.<sup>7</sup> That same study found that 46 percent of homeless veterans are white, 45 percent black, 5 percent Hispanic, and 4 percent Native American.<sup>8</sup>

### B. How Many Are There?

Counting the number of homeless people is notoriously difficult, and counting homeless veterans is no exception. In a July 2009 report, the U.S. Department of Housing and Urban Development found that, of the 1.6 million homeless people who used a shelter over the course of a year, approximately 13 percent were veterans.<sup>9</sup> In a January 2008 report, VA found that approximately 131,000 veterans were homeless on a given night, and VA estimates that perhaps twice as many are homeless over the course of a year.<sup>10</sup> The National Alliance to End Homelessness estimates that between 44,000 and 66,000 veterans are currently chronically homeless.<sup>11</sup> Iraq and Afghanistan veterans are already appearing among the homeless: as of 2008, VA's homeless outreach programs had served more than 1,800 of those new veterans.<sup>12</sup> And, as mentioned above, another ninety thou-

sand to one-half million veterans may be "at risk" of homelessness.<sup>13</sup>

### C. What Causes Homelessness Among Veterans?

Veterans, like everyone else, are at a higher risk of homelessness when faced with mental illness, physical disabilities, weak social structures, and poverty. Veterans, however, seem to experience several of those risk factors at a higher rate than the general public. Some of those factors, such as physical disabilities or psychological problems, may have resulted directly from the veteran's military service. Others, such as weak social networks and poverty, could have been there before enlistment or could have been created or compounded by military service and a difficult transition back to civilian life.<sup>14</sup>

#### 1. Psychological Problems and Physical Disabilities

Psychiatric issues and substance abuse have been described as the primary risk factors for homelessness among veterans.<sup>15</sup> VA estimates that 45 percent of homeless veterans suffer from mental illness, and slightly more than 70 percent suffer from alcohol or other drug abuse problems.<sup>16</sup> An April 2009 VA presentation, moreover, cited evidence that suggested an increase in substance

<sup>7</sup>MARTHA R. BURT ET AL., URBAN INSTITUTE, HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, TECHNICAL REPORT 11-2, 11-3 (1999), [www.huduser.org/publications/homeless/homeless\\_tech.html](http://www.huduser.org/publications/homeless/homeless_tech.html).

<sup>8</sup>*Id.*

<sup>9</sup>Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 2008 Annual Homeless Assessment Report to Congress iii (2009), [www.hudhre.info/documents/4thHomelessAssessmentReport.pdf](http://www.hudhre.info/documents/4thHomelessAssessmentReport.pdf).

<sup>10</sup>John H. Kuhn & John Nakashima, Community Homelessness Assessment, Local Education and Networking Group (CHALENG) for Veterans: The Fifteenth Annual Progress Report on Public Law 105-114, at 2, 19 (2009), <http://bit.ly/23xp70>; U.S. Department of Veterans Affairs, *supra* note 1.

<sup>11</sup>Cunningham et al., *supra* note 3, at 3.

<sup>12</sup>U.S. Department of Veterans Affairs, 2008 Annual Report of the Advisory Committee on Homeless Veterans 11, <http://bit.ly/eLFtv>.

<sup>13</sup>Cunningham et al., *supra* note 3, at 4, 25–27.

<sup>14</sup>See *id.* at 10 n.10 (some evidence suggests that individuals with weak social networks are more inclined to enlist); *id.* at 11 (discussion of challenges in readjusting to civilian life); CENTER FOR MILITARY HEALTH POLICY RESEARCH, RAND CORPORATION, INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY 140–48 (Terri Tanielian & Lisa H. Jaycox eds., 2008), [www.rand.org/pubs/monographs/MG720/](http://www.rand.org/pubs/monographs/MG720/) (how war-zone stress can lead to readjustment problems; effect of postcombat mental and cognitive conditions on family life).

<sup>15</sup>CENTER FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 14, at 140.

<sup>16</sup>U.S. Department of Veterans Affairs, *supra* note 1.

abuse among Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) veterans in particular.<sup>17</sup> And the Rand Corporation found that one-third of Iraq and Afghanistan veterans suffer from posttraumatic-stress disorder (PTSD), traumatic brain injury (TBI), or major depression, perhaps due to long deployments and a high rate of exposure to combat.<sup>18</sup> That finding is particularly disturbing given that PTSD's many adverse effects include substance abuse, interpersonal difficulties, and unemployment, all of which are associated with veteran homelessness.<sup>19</sup>

The alarmingly high incidence of suicide among the youngest veterans bears witness to their psychological and social struggles. OEF/OIF veterans between 20 and 24 years of age have the highest suicide rate among all veterans and are almost four times more likely to end their lives than nonveterans in the same age group.<sup>20</sup> More than 6,000 OEF/OIF veterans took their lives in 2005 alone.<sup>21</sup> In the past, the path to homelessness for Vietnam era veterans was believed to take about a decade, but homeless advocates are concerned about that pace having accelerated for OEF/OIF veterans.<sup>22</sup>

Many veterans also suffer from physical disabilities, which can put them at a higher risk of homelessness. Compared to 16 percent of the adult nonveteran population, 26 percent of veterans have a disability.<sup>23</sup> With 1.7 million troops deployed to Iraq and Afghanistan—34,000 of whom have already been wounded in action—the number of disabled, homeless veterans is likely to increase.<sup>24</sup>

## 2. Weak Social Networks

Veterans may be predisposed to having weak social networks, which can lead to lack of support, social isolation, and increased risk of homelessness.<sup>25</sup> The National Alliance to End Homelessness found that veterans have low marriage rates and high divorce rates, and one in five veterans lives alone.<sup>26</sup> Testimony before the House Committee on Veterans' Affairs noted a high divorce rate among National Guard and Reserve soldiers, especially those who are deployed and have been deployed on more than one occasion.<sup>27</sup> And the effects of PTSD, TBI, and depression can have a terrible impact on the family.<sup>28</sup> Veterans suffering from those combat-related conditions have difficulty maintaining emotional intimacy and are at a higher risk of divorce.<sup>29</sup> Veterans with PTSD tend to

<sup>17</sup>John P. Allen, Veterans Health Administration, Alcohol Problems and Services for OIF/OEF [Operation Iraqi Freedom/Operation Enduring Freedom] Veterans (April 29, 2009), [www.dcoe.health.mil/Events\\_archive.aspx](http://www.dcoe.health.mil/Events_archive.aspx) (PowerPoint presentation slides 3–5).

<sup>18</sup>CENTER FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 14, at xix–xxi.

<sup>19</sup>See *id.* at xxii, 140; BENJAMIN R. KARNEY ET AL., CENTER FOR MILITARY HEALTH POLICY RESEARCH, RAND CORPORATION, INVISIBLE WOUNDS: PREDICTING THE IMMEDIATE AND LONG-TERM CONSEQUENCES OF MENTAL HEALTH PROBLEMS IN VETERANS OF OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM 105–106 (2008), [www.rand.org/pubs/working\\_papers/2008/RAND\\_WR546.pdf](http://www.rand.org/pubs/working_papers/2008/RAND_WR546.pdf) (cites research from National Vietnam Veterans Readjustment Study).

<sup>20</sup>Armen Keteyian, *Suicide Epidemic Among Veterans*, CBS NEWS INVESTIGATES, Nov. 13, 2007, <http://bit.ly/4sSfml>.

<sup>21</sup>*Id.*

<sup>22</sup>See Kimberly Hefling, *Study: 1 Out of 4 Homeless Are Veterans*, WASHINGTON POST, Nov. 8, 2007, <http://bit.ly/ThZ0X>.

<sup>23</sup>See U.S. CENSUS BUREAU, *supra* note 1, <http://bit.ly/Vrlu9> (“[Table] S2101. Veteran Status”).

<sup>24</sup>See U.S. Department of Defense, Global War on Terrorism: Casualties by Military Service Component—Active, Guard and Reserve, October 7, 2001 Through August 1, 2009 (n.d.), <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>.

<sup>25</sup>Cunningham et al., *supra* note 3, at 11.

<sup>26</sup>*Id.*

<sup>27</sup>*Post Traumatic Stress Disorder Treatment and Research: Moving Ahead Toward Recovery: Hearing Before the Subcomm. on Health of the H. Comm. on Veterans' Affairs*, 110th Cong. 22 (2008) (Serial No. 110-78).

<sup>28</sup>CENTER FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 14, at 141–48.

<sup>29</sup>*Id.* at 142–43.

detach themselves from activities and people.<sup>30</sup> Moreover, veterans returning from a war zone may overreact to common family issues, with constant anger and frequent outbursts that can frighten family members.<sup>31</sup>

Some evidence suggests that individuals with weak social networks may be more likely to enlist in the service, and, at the same time, many veterans have social problems due to difficulties adjusting to civilian life after their highly structured military service.<sup>32</sup> That is especially true for combat veterans: research indicates that war zone stress can lead to readjustment problems, which may in turn lead to homelessness.<sup>33</sup>

### 3. Economic Barriers

Joblessness and lack of income contribute to veteran homelessness, particularly for the youngest veterans. Overall veterans are more financially secure than the general public, with lower poverty rates and higher average incomes.<sup>34</sup> However, in 2008 unemployment for veterans under 24 was 14.1 percent, and younger veterans are struggling to transfer their military skills into the civilian workforce.<sup>35</sup>

The high incidence of mental health issues among younger veterans is compounding their employment problem. Servicemembers between 18 and 24 are three times as likely to suffer from mental health problems, including PTSD, as are servicemembers over 40.<sup>36</sup> And employ-

ers are seemingly “nervous” about hiring returning servicemembers because of what employers hear about PTSD and TBI.<sup>37</sup> In these tough economic times, employers may choose to forgo the hiring of a veteran in favor of someone who is not predisposed to problems arising from PTSD, TBI, or other service-related difficulties.

## II. Achieving Stability for Veterans

Homelessness does not happen in a vacuum. There is no one thing that causes homelessness and there will be no one thing that solves it.

—Zemobin Embry-Nimmer of the Emergency Services Network, San Francisco, California

Much needs to be done to overcome homelessness among veterans. The options discussed below are a powerful starting point to help veterans rise above adversity and achieve stability in their lives. First we cover some resources—such as VA compensation and pension benefits, VA education benefits, and veterans employment initiatives—that can help veterans achieve financial stability. We then discuss two key programs that help veterans achieve housing stability through transitional and long-term housing coupled with services such as treatment for psychological problems and substance abuse.

<sup>30</sup>Helpguide.org, Post-Traumatic Stress Disorder (PTSD): Symptoms, Treatment, and Self-Help (n.d.), <http://bit.ly/iqCla>.

<sup>31</sup>National Center for PTSD, U.S. Department of Veterans Affairs, *Returning from the War Zone: A Guide for Families of Military Members 3* (2009), <http://bit.ly/18t54L>, accord CENTER FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 14, at 142, 144–45 (relationship between combat-related psychological and cognitive injuries and increased risk of violence in home).

<sup>32</sup>Cunningham et al., *supra* note 3, at 10 n.10, 11.

<sup>33</sup>CENTER FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 14, at 140 (research from National Vietnam Veterans Readjustment Study).

<sup>34</sup>See U.S. CENSUS BUREAU, *supra* note 23 (6 percent of veterans and 12 percent of nonveterans had incomes below federal poverty threshold; male veterans earn about \$5,000 more per year, and female veterans earn over \$8,000 more per year than their nonveteran counterparts).

<sup>35</sup>Bureau of Labor Statistics, U.S. Department of Labor, *Unemployment and Veterans who Served Since September 2001: 2008* (March 23, 2009), [www.bls.gov/opub/ted/2009/mar/wk4/art01.htm](http://www.bls.gov/opub/ted/2009/mar/wk4/art01.htm); Cunningham et al., *supra* note 3, at 11.

<sup>36</sup>*Post Traumatic Stress Disorder Treatment and Research*, *supra* note 27, at 6.

<sup>37</sup>*Id.* at 22.

## A. Financial Stability

Three major resources can help veterans achieve financial stability: VA compensation and pension benefits, VA education benefits, and veterans employment initiatives. By taking advantage of one or more of these resources, struggling veterans can lower their risk of homelessness by improving their incomes or job prospects or both.<sup>38</sup>

### 1. VA Compensation and Pension Benefits

VA compensation and pension benefits are perhaps the most important resource for veterans suffering from service-related physical and psychological problems. As discussed above, veterans who suffer from physical disabilities and mental illness are at an increased risk of homelessness.<sup>39</sup> At the same time, individuals who receive disability benefits enjoy improved housing opportunities and an increase in their overall quality of life.<sup>40</sup> Thus VA needs to follow its own policy of expediting claims filed by homeless veterans and ensuring that eligible veterans are linked to their benefits as quickly as possible. For many veterans, even a small amount of VA benefits could mean the difference between sta-

bility and suffering the ravages of hunger and homelessness.

According to VA regulations, a veteran is entitled to service-connected compensation if the veteran “is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty.”<sup>41</sup> After VA finds that connection between a current condition and the veteran’s service, VA determines the level of compensation by “rating” the injury on a scale of 0 percent to 100 percent.<sup>42</sup> For example, in 2009 a single veteran with a disability rated at 10 percent receives a monthly benefit of \$123, while a single veteran with a disability rated at 100 percent receives a monthly benefit of \$2,673.<sup>43</sup>

VA also administers a pension program for wartime veterans.<sup>44</sup> A veteran may be eligible for a pension if the veteran (1) served at least ninety days of active military service, one day of which was during a period of war; (2) has an annual income that is below the maximum pension rate and a net worth that does not provide for adequate maintenance; and (3) is either 65 or older or totally and permanently disabled.<sup>45</sup> For 2009 a qualified veteran

<sup>38</sup>For additional discussion of U.S. Department of Veterans Affairs (VA) benefits and services, see Mary Ellen McCarthy, *What Difference Does It Make if the Client Is a Veteran? None if You Don't Ask About Veteran Status*, in this issue; Meg Bartley et al., *VA Benefits Available to Low-Income Veterans*, 40 CLEARINGHOUSE REVIEW 324 (Sept.–Oct. 2006).

<sup>39</sup>Injuries that result from service often interfere with a veteran’s quality of life and employment opportunities (see *Veterans for Common Sense v. Peake*, 563 F. Supp. 2d 1049, 1070 (N.D. Cal. 2008)).

<sup>40</sup>David Long et al., *Employment and Income Supports for Homeless People* 11-5, 11-6 (2007) (prepared for National Symposium on Homelessness Research); see also *The Effectiveness of Federal Grants to Community Based Organizations with Regard to Homeless Veterans: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Veterans Affairs*, 106th Cong. (1999), <http://veterans.house.gov/hearings/schedule106/june99/6-24/witness.htm> (statement of Peter H. Dougherty, Director, Homeless Veterans Programs, U.S. Department of Veterans Affairs) (“[social security] beneficiaries had improved housing and overall satisfaction with life as a result of their receipt of benefits”).

<sup>41</sup>38 C.F.R. § 3.4 (2009); see also 38 U.S.C. §§ 1110, 1131 (basic entitlement to compensation for service-connected disability).

<sup>42</sup>38 U.S.C. §§ 1114, 1134 (disability compensation rates); 38 C.F.R. §§ 4.1–4.31 (2009) (schedule for rating disabilities).

<sup>43</sup>U.S. Department of Veterans Affairs, *Veterans Compensation Benefits Rate Tables—Effective 12/1/08* (reviewed/updated Nov. 25, 2008), [www.vba.va.gov/bln/21/Rates/comp01.htm](http://www.vba.va.gov/bln/21/Rates/comp01.htm). Disabled veterans with spouses or dependents may be eligible for an additional monthly amount (see *id.*).

<sup>44</sup>38 U.S.C. §§ 1501–1562; 38 C.F.R. § 3.3(a)(3) (2009) (VA’s “improved pension” program requirements, which apply to all new pension claims on or after January 1, 1979). See generally U.S. Department of Veterans Affairs, *Veterans Pension Program* (reviewed/updated July 22, 2008), [www.vba.va.gov/bln/21/pension/vetpen.htm](http://www.vba.va.gov/bln/21/pension/vetpen.htm).

<sup>45</sup>38 U.S.C. §§ 1513 (2009) (veterans 65 or older), 1521 (eligibility requirements for pension), 1522 (net worth limitation); 38 C.F.R. § 3.3(a)(3) (2009) (VA regulations for eligibility for improved pension program).

with no spouse or dependents could be eligible for a maximum pension benefit of \$11,830.<sup>46</sup> Unlike compensation benefits, however, pension benefits are reduced dollar-for-dollar by a veteran's other income.<sup>47</sup> For both the pension and compensation benefits, eligible veterans must have been discharged from service "under conditions other than dishonorable."<sup>48</sup>

Despite the importance of VA benefits, veterans who file claims have a long wait before VA approves or denies entitlement to service-connected compensation or pension. According to VA, in 2008 reaching an initial decision on a compensation or pension claim took an average of six months.<sup>49</sup> Some veterans face a wait of eighteen months or more.<sup>50</sup> If the veteran disagrees with VA's initial decision, the veteran may appeal to the Board of Veterans' Appeals (BVA). However, the average wait from initial filing of a claim to a BVA final decision is a staggering 4.4 years.<sup>51</sup> And that figure does not include any additional waiting time generated if the veteran appeals the BVA decision to the U.S. Court of Appeals for Veterans Claims. For veterans living on the streets or in shelters, where every day is a struggle to meet a few basic needs, those months or years can seem like a lifetime.

Homeless veterans spending six or more months waiting for a decision on their claims is not only unconscionable but

also contrary to VA's own policy, which requires that all homeless veterans claims be adjudicated within thirty days. On June 6, 1991, VA issued VA Circular 20-91-9, which established procedures "to enact reduced claims processing times to afford homeless veterans a better opportunity to attain reintegration into society."<sup>52</sup> Specifically the circular's policy mandates that VA regional management "[e]nsure that all claims initiated by homeless veterans are processed within a maximum of 30 calendar days from receipt" and that such claims be identified as "SPECIAL" and labeled "HOMELESS VETERAN/EXPEDITED PROCESSING REQUIRED."<sup>53</sup>

That policy has since been affirmed by Congress and reaffirmed by VA. Ten years after VA issued Circular 20-91-9, Congress passed the Homeless Veterans Comprehensive Assistance Act of 2001, in which it found that "homelessness is a significant problem in the veterans community and veterans are disproportionately represented among homeless men" and declared a "national goal to end chronic homelessness among veterans."<sup>54</sup> The Act required VA to file an "Annual Report on Assistance to Homeless Veterans," which must have "[i]nformation on efforts undertaken to expedite the processing of claims for benefits of homeless veterans."<sup>55</sup> In response to that Act, VA issued VBA [Veterans Benefits Administration] Letter 20-02-34, which, among

<sup>46</sup>U.S. Department of Veterans Affairs, Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), [www.vba.va.gov/bln/21/Rates/pen01.htm](http://www.vba.va.gov/bln/21/Rates/pen01.htm).

<sup>47</sup>38 U.S.C. § 1521; 38 C.F.R. § 3.273 (2009).

<sup>48</sup>38 C.F.R. § 3.12 (2009).

<sup>49</sup>OFFICE OF BUDGET, U.S. DEPARTMENT OF VETERANS AFFAIRS, FY [FISCAL YEAR] 2008 PERFORMANCE AND ACCOUNTABILITY REPORT 119, 123 (2008), [www.va.gov/budget/report/2008/index.htm](http://www.va.gov/budget/report/2008/index.htm) (average time from date claim is received to initial decision is 179 days).

<sup>50</sup>James Dao, *Veterans Affairs Faces Surge of Disability Claims*, NEW YORK TIMES, July 12, 2009, [www.nytimes.com/2009/07/13/us/13backlog.html](http://www.nytimes.com/2009/07/13/us/13backlog.html); Lizette Alvarez, *New Veterans Hit Hard By Economic Crisis*, NEW YORK TIMES, Nov. 17, 2008, [www.nytimes.com/2008/11/18/us/18vets.html](http://www.nytimes.com/2008/11/18/us/18vets.html).

<sup>51</sup>*Veterans for Common Sense*, 563 F. Supp. 2d at 1074 (factors in average time for regional office to issue initial decision and complete process for certifying appeal to Board of Veterans' Appeals (BVA) and average time for BVA to issue decision); see also OFFICE OF BUDGET, *supra* note 49, at 123 (average time for BVA appeal is 645 days).

<sup>52</sup>Veterans Benefits Administration, U.S. Department of Veterans Affairs, Circular 20-91-9 (June 6, 1991) ("Procedures for Processing Claims for Homeless Veterans").

<sup>53</sup>*Id.*

<sup>54</sup>Homeless Veterans Comprehensive Assistance Act of 2001, Pub. L. No. 107-95, 115 Stat. 903 (codified at 38 U.S.C. §§ 2001 *et seq.*).

<sup>55</sup>38 U.S.C. § 2065(d).

other points, reaffirmed VA's obligation to "specially label, control and expedite processing of homeless veteran claims" as set forth in Circular 20-91-9.<sup>56</sup>

Nevertheless, VA apparently continues to ignore its own policy as homeless veterans are left languishing for months while their claims sit at VA. Staff members at Public Counsel Law Center's Center for Veterans Advancement, a national leader in homeless veterans advocacy, have seen only a handful of cases that have been adjudicated within the required thirty days.

## 2. Education Benefits and Employment Initiatives

Ensuring that veterans have the skills and opportunities to obtain stable employment will help them avoid poverty and homelessness. That is particularly true for our newest veterans, who after discharge are often hit with a "triple-whammy" of injury, unemployment, and waiting for disability claims to be processed.<sup>57</sup> In 2008 unemployment for veterans under 24 was 14.1 percent compared to 11.6 percent for the nonveteran population of the same age group and 5.6 percent for all nonveterans.<sup>58</sup> And OEF/OIF veterans tend to be young and lack the formal education they need to be competitive in the job market. After deployment to Iraq, servicemembers between 18 and 24 constitute approximately 50 percent of the Army and

80 percent of the Marines.<sup>59</sup> Moreover, of the deployed troops, 82 percent of the Army and 89 percent of the Marines have only a high school diploma or less.<sup>60</sup> Many returning servicemembers who joined the military right out of high school are developing résumés and participating in job interviews for the first time.<sup>61</sup>

### a. VA Education Benefits

To overcome the potential economic disparities created by returning servicemembers' lack of formal education, service providers and servicemembers need to become aware of available VA education benefits. Two major sources of education benefits for veterans are the Montgomery GI Bill and the Post 9/11 GI Bill.<sup>62</sup>

In a nutshell, the Montgomery GI Bill provides up to thirty-six months of benefits for education at colleges and technical or vocational schools for qualified individuals.<sup>63</sup> Very generally a servicemember may qualify for benefits under the Montgomery GI Bill's active-duty provisions if the servicemember served at least two years in active duty, received an honorable discharge, and has a high school diploma or equivalent.<sup>64</sup> A servicemember could qualify for benefits under the Montgomery GI Bill Selected Reserve provisions if the servicemember has a six-year obligation to serve in the Selected Reserve, has completed initial

<sup>56</sup>Veterans Benefits Administration, U.S. Department of Veteran Affairs, VBA Letter 20-02-34, at 2 (Sept. 9, 2002) ("Homeless Veterans Outreach and Claims Processing—Public Law 107-95).

<sup>57</sup>Alvarez, *supra* note 50.

<sup>58</sup>Bureau of Labor Statistics, *supra* note 35.

<sup>59</sup>*Veterans for Common Sense*, 563 F. Supp. 2d at 1070.

<sup>60</sup>*Id.* Those statistics cry out for further examination, considering the likelihood of social-economic disparities in recruitment; but that subject is better left for a separate, in-depth discussion.

<sup>61</sup>*Returning Soldiers Enlist Help to Find Jobs Outside Military*, DALLAS MORNING NEWS, July 15, 2009.

<sup>62</sup>38 U.S.C. §§ 3001 *et seq.* (Montgomery GI Bill); *id.* §§ 3301 *et seq.* (Post 9/11 GI Bill). Originally enacted as the Servicemen's Readjustment Act of 1944 (Pub. L. No. 78-346, 58 Stat. 284) and colloquially referred to as "the GI Bill," veterans' education and home loan benefits were revised several times, including in 1984 with the passage of the Montgomery GI bill and in 2008 with the passage of the Post 9/11 GI Bill (U.S. Department of Veterans Affairs, *Born of Controversy: The GI Bill of Rights* (reviewed/updated July 10, 2009), [www.gibill.va.gov/GI\\_Bill\\_Info/history.htm](http://www.gibill.va.gov/GI_Bill_Info/history.htm) (short history of GI Bill)).

<sup>63</sup>38 U.S.C. § 3013.

<sup>64</sup>*Id.* § 3011. Eligibility for education benefits under the Montgomery GI Bill—Active Duty is discussed more fully on VA's website (see U.S. Department of Veterans Affairs, *Montgomery GI Bill—Active Duty* (reviewed/updated July 10, 2009), [www.gibill.va.gov/pamphlets/CH30/CH30\\_Pamphlet\\_General.htm](http://www.gibill.va.gov/pamphlets/CH30/CH30_Pamphlet_General.htm)).

active duty for training, and has a high school diploma or equivalent.<sup>65</sup>

The Post 9/11 GI Bill, by contrast, is a new program that is geared specifically to veterans who have served since September 11, 2001.<sup>66</sup> It pays up to thirty-six months of tuition and fees and stipends for housing, books, and supplies.<sup>67</sup> A veteran may be eligible for benefits if the veteran served at least ninety days of aggregate service on or after September 11, 2001, or was discharged with a service-connected disability after thirty days of active duty.<sup>68</sup> The veteran must have received an honorable discharge.<sup>69</sup>

The maximum amount of tuition that the Post 9/11 GI Bill pays is equal to the most expensive public undergraduate tuition in the state where the servicemember or veteran is attending school.<sup>70</sup> However, under the Yellow Ribbon G.I. Education Enhancement Program, qualified individuals who attend participating schools may be entitled to additional tuition benefits.<sup>71</sup> Under that program a participating college or institution may contribute up to 50 percent of a student's additional tuition costs, and VA matches that contribution.<sup>72</sup>

## b. Veterans Employment Initiatives

Three significant employment initiatives can protect returning servicemembers from homelessness by helping them rejoin the civilian workforce. The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 allows servicemembers to resume their former employment after returning from active duty. Veterans preference gives veterans priority for federal jobs. And the Work Opportunity Tax Credit gives tax incentives to employers who hire new veterans.

**Uniformed Services Employment and Reemployment Rights Act of 1994.** The USERRA secures employment rights and benefits for veterans and members of the military reserve components.<sup>73</sup> The USERRA allows for a servicemember to be absent from employment due to military duty for five years.<sup>74</sup> Upon completion of military duty, returning servicemembers must be reemployed in the job that they would have had if they had not been absent from work, and they must have all additional seniority, rights, and benefits that they would have attained

<sup>65</sup>38 U.S.C. § 3012. Eligibility for education benefits under the Montgomery GI Bill—Selected Reserve is discussed more fully on the VA's website (see U.S. Department of Veterans Affairs, Montgomery GI Bill—Selected Reserve: Benefit Description (reviewed/updated July 10, 2009), [www.gibill.va.gov/pamphlets/CH1606/CH1606\\_Pamphlet\\_General.htm](http://www.gibill.va.gov/pamphlets/CH1606/CH1606_Pamphlet_General.htm)). For a step-by-step comparison of an individual's entitlement under each of the VA education programs, see U.S. Department of Veterans Affairs, What Education Benefit is Best for Me? Learn Step-by-Step (reviewed/updated July 6, 2009), [www.gibill.va.gov/GI\\_Bill\\_Info/CH33/step-by-step.htm](http://www.gibill.va.gov/GI_Bill_Info/CH33/step-by-step.htm).

<sup>66</sup>Post 9/11 GI Bill, Pub. L. No. 110-252, Title V, §§ 5001 *et seq.*, 122 Stat. 2323, 2357 (enacted June 30, 2008) (codified at 38 U.S.C. §§ 3301 *et seq.*).

<sup>67</sup>38 U.S.C. §§ 3312, 3313. See generally U.S. Department of Veterans Affairs, What Is the Post-9/11 GI Bill? (reviewed/updated August 17, 2009), <http://bit.ly/2PMETn>.

<sup>68</sup>38 U.S.C. § 3311.

<sup>69</sup>*Id.*

<sup>70</sup>*Id.* § 3313(c)(1)(A); see also U.S. Department of Veterans Affairs, 2009–2010 Maximum In-State Tuition and Fees (reviewed/updated Aug. 17, 2009), [www.gibill.va.gov/GI\\_Bill\\_Info/CH33/Tuition\\_and\\_fees.htm](http://www.gibill.va.gov/GI_Bill_Info/CH33/Tuition_and_fees.htm).

<sup>71</sup>38 U.S.C. § 3317. See generally U.S. Department of Veterans Affairs, Yellow Ribbon Program (reviewed/updated July 10, 2009), [https://www.gibill.va.gov/GI\\_Bill\\_Info/CH33/Yellow\\_ribbon.htm](https://www.gibill.va.gov/GI_Bill_Info/CH33/Yellow_ribbon.htm).

<sup>72</sup>38 U.S.C. § 3317. See generally U.S. Department of Veterans Affairs, *supra* note 71.

<sup>73</sup>38 U.S.C. §§ 4301–4335 (Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)), 4312 (reemployment rights of persons who serve in uniformed services). See generally Veterans' Employment and Training Service, U.S. Department of Labor, VETS USERRA Fact Sheet 3, U.S. Department of Labor Program Highlights, Job Rights for Veterans and Reserve Component Members (n.d.), [www.dol.gov/vets/programs/USERRA/USERRA\\_fs.htm](http://www.dol.gov/vets/programs/USERRA/USERRA_fs.htm) (job rights for veterans and reserve component members under USERRA).

<sup>74</sup>38 U.S.C. § 4312(a).

during that time.<sup>75</sup> The USERRA protects disabled veterans in that employers are required to make reasonable efforts to accommodate the needs of the veteran.<sup>76</sup>

The time frame within which servicemembers must return to work is based on the amount of time spent on active military duty.<sup>77</sup> For fewer than 31 days of service, the veteran must return to work no later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of service, travel time, and an eight-hour rest period.<sup>78</sup> For a service period of more than 30 days but fewer than 181 days, the servicemember must submit an application for reemployment with 14 days from release of duty.<sup>79</sup> For a period of service in excess of 180 days, the servicemember must submit an application for reemployment within 90 days from release of service.<sup>80</sup>

**Priority Hiring—“Veterans Preference.”** According to the U.S. Office of Personnel Management, “[s]ince the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs.”<sup>81</sup> Since World War II, the Veterans’ Preference Act of 1944 as amended has prevented veterans seeking federal employment from being penalized for their time in military service.<sup>82</sup> In 2006 the National Defense Authorization Act granted veter-

ans preference to individuals who served active duty after September 11, 2001.<sup>83</sup> The Office of Personnel Management administers the veterans preference in employment benefits established pursuant to Title 5 of the U.S. Code (Title 5 governs federal agencies and employees) and oversees other statutory employment requirements identified within Title 5 and Title 38 of the U.S. Code.<sup>84</sup>

**Tax Incentives for Employers Hiring Veterans.** The Work Opportunity Tax Credit (WOTC) promotes the hiring of qualified members of specific “target groups” by giving tax credits to employers who hire individuals within those groups.<sup>85</sup> Under the WOTC, employers are entitled to tax benefits of up to \$12,000 if they hire a “qualified veteran,” defined as a veteran who is either (1) entitled to VA compensation for a service-connected disability and within the previous year was discharged from the military or had a six-month period of unemployment or (2) a member of a family that received assistance under the federal Food Stamp Program for three of the preceding twelve months.<sup>86</sup>

The American Recovery and Reinvestment Act of 2009 added to the WOTC a provision that allows an employer to receive a tax credit if it hires an “unemployed veteran” during 2009 or 2010.<sup>87</sup> An “unemployed veteran” is defined as

<sup>75</sup>*Id.* §§ 4313(a)(1)–(2), 4316(a); see also Veterans’ Employment and Training Service, *supra* note 73 (“escalator” principle).

<sup>76</sup>38 U.S.C. § 4313(a)(3).

<sup>77</sup>*Id.* § 4312(e)(1).

<sup>78</sup>*Id.* § 4312(e)(1)(A).

<sup>79</sup>*Id.* § 4312(e)(1)(C).

<sup>80</sup>*Id.* § 4312(e)(1)(D).

<sup>81</sup>U.S. Office of Personnel Management, VetGuide (n.d.), [www.opm.gov/veterans/html/vetguide.asp](http://www.opm.gov/veterans/html/vetguide.asp) (“Veterans’ Preference in Appointments: Why Preference Is Given”).

<sup>82</sup>Veterans’ Preference Act of 1944, Pub. L. No. 78-359, 58 Stat. 387 (codified as amended in scattered sections of 5 U.S.C.).

<sup>83</sup>National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, 119 Stat. 3136, 3451 (codified at 5 U.S.C. § 2108(1)).

<sup>84</sup>U.S. Office of Personnel Management, *supra* note 81 (“Introduction”).

<sup>85</sup>26 U.S.C. § 51.

<sup>86</sup>*Id.* §§ 51(d)(3) (“qualified veteran”), 51(b) (amount of tax credit).

<sup>87</sup>American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1221, 123 Stat. 115, 337–38 (enacted Feb. 17, 2009) (codified at 26 U.S.C. § 51(d)(14)).

any veteran who was discharged from active duty in the five years preceding the hire date and who received unemployment compensation under state or federal law for at least four weeks of the year preceding the hire date.<sup>88</sup> Even if a veteran does not meet the “qualified veteran” or “unemployed veteran” standards, the veteran could still fall into one of the other target groups defined by the WOTC and thus qualify the veteran’s employer for the tax credit.<sup>89</sup>

## B. Stability Through Supportive Housing

A key to overcoming homelessness among veterans is access to safe, supportive housing that provides mental health and substance abuse treatment and other services such as case management, employment development, and life-skills counseling. VA has helped develop such resources for veterans through its Capital Grant and Per Diem program and the Veterans Affairs Supportive Housing program.

### 1. Capital Grant and Per Diem Program

VA’s Capital Grant and Per Diem program funds community-based organizations to develop desperately needed transitional housing for homeless veterans.<sup>90</sup> Programs eligible for funding under the Capital Grant and Per Diem

program must provide up to twenty-four months of supportive housing or operate service centers that offer, for example, case management, education, crisis intervention, counseling, and services targeting specialized populations, such as homeless women.<sup>91</sup>

Through its capital grant component, VA may fund up to 65 percent of a transition housing project, which may cover costs for the acquisition, renovation, or construction of a facility.<sup>92</sup> Capital grant funds may also be used to purchase vehicles needed to provide outreach and supportive services to the homeless veteran population.<sup>93</sup> Under the per diem component, VA funds help defray community-based organizations’ operational expenses.<sup>94</sup> The maximum per diem payment is \$34.40 per day per veteran.<sup>95</sup>

### 2. Veterans Affairs Supportive Housing Program

Homeless veterans can secure permanent housing, in combination with VA case management and clinical services, through the U.S. Department of Housing and Urban Development (HUD)–Veterans Affairs Supportive Housing (VASH) program. The 2008 Consolidated Appropriations Act allotted \$75 million of funding for the VASH program.<sup>96</sup> HUD used that money to fund approximately 10,000 housing vouchers.<sup>97</sup> VA designat-

<sup>88</sup>26 U.S.C. § 51(d)(14)(B)(i).

<sup>89</sup>*Id.* § 51(d) (specific target groups include, e.g., qualified ex-felons, Supplemental Security Income recipients, and long-term family assistance recipients).

<sup>90</sup>38 U.S.C. §§ 2011 (capital grant program), 2012 (per diem program); 38 C.F.R. §§ 61.0–61.82 (2009) (VA regulations for homeless provider grant and per diem program); see also Long et al., *supra* note 40, at 11–12 (VA’s Capital Grant and Per Diem Program).

<sup>91</sup>38 U.S.C. §§ 2011–2012; see also 38 C.F.R. §§ 61.13 (2009) (rating criteria for capital grant applications), 61.30 (services to be paid for by per diem grants), 61.40 (special-needs grants for programs servicing special populations), 61.80(d) (homeless veteran may remain in transitional housing for no longer than twenty-four months unless veteran needs additional time to locate permanent housing or prepare for independent living). See generally U.S. Department of Veterans Affairs, Homeless Veterans: Grant & Per Diem Program Homepage (reviewed/updated May 29, 2009), [www1.va.gov/HOMELESS/page.cfm?pg=3](http://www1.va.gov/HOMELESS/page.cfm?pg=3).

<sup>92</sup>38 U.S.C. § 2011(b)(1)(A), 2011(c); 38 C.F.R. § 61.10 (2009).

<sup>93</sup>38 U.S.C. § 2011(b)(1)(B); 38 C.F.R. § 61.10 (2009).

<sup>94</sup>38 U.S.C. § 2012(a); 38 C.F.R. § 61.30 (2009).

<sup>95</sup>U.S. Department of Veterans Affairs, Homeless Veterans: Grant & Per Diem Program: FAQ [Frequently Asked Questions] (reviewed/updated May 15, 2009), [www1.va.gov/homeless/page.cfm?pg=4](http://www1.va.gov/homeless/page.cfm?pg=4).

<sup>96</sup>Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1897 (enacted Dec. 26, 2007).

<sup>97</sup>See U.S. Department of Housing and Urban Development, HUD–VASH [Veterans Affairs Supportive Housing] Vouchers (March 25, 2009), [www.hud.gov/offices/pih/programs/hcv/vash/](http://www.hud.gov/offices/pih/programs/hcv/vash/).

ed 132 VA medical centers to participate in the program by providing supportive services to veteran participants.<sup>98</sup>

VASH vouchers, similar to other housing choice vouchers authorized by Section 8 of the U.S. Housing Act of 1937, may be used to rent affordable, decent, and safe housing at a location that the individual chooses.<sup>99</sup> To be eligible for the VASH program, a person must be a homeless veteran whose income is no more than 50 percent of the area median, adjusted for family size.<sup>100</sup> The VASH program presents a tremendous opportunity for homeless veterans to obtain permanent housing while receiving VA supportive services that will help them lead healthier lives.

### III. Innovative Legal Programs

The same problems that put veterans at risk of homelessness can land them—charged with offenses that are often the product of their PTSD, TBI, mental illnesses, or addictions—in the criminal justice system. Often those veterans become entrenched in a cycle of arrest, court proceedings, incarceration, probation, and rearrest, while their underlying mental health problems compound. Linking those struggling veterans to life-saving treatment that could free them from a downward spiral of criminality and homelessness is thus imperative.

We discuss two innovative ways to accomplish that goal: alternative sentencing statutes and specialized veterans courts. Both help veterans whose substance abuse and mental illness have propelled them into conflicts with the law, and both

should be made available to veterans across the nation.

#### A. Alternative Sentencing Statutes

Alternative sentencing statutes allow courts to order a veteran into an appropriate treatment program instead of jail or prison. California law, for example, already allows for alternative sentencing for veterans whose offenses are a product of PTSD, substance abuse, or other psychological problems stemming from their military service in combat.<sup>101</sup> In such cases the court may order the veteran into a local, state, federal, or private nonprofit treatment program, preferably one with “a demonstrated history of specializing in the treatment of military service-related issues, such as post-traumatic stress disorder, substance abuse, or psychological problems.”<sup>102</sup>

The California Legislature created this option in part because it found that, “[d]uring and after the Vietnam war, a significant number of our returning combat veterans were incarcerated because of behavior caused or exacerbated by their misunderstood and untreated PTSD.”<sup>103</sup> To avoid that same fate for OEF/OIF veterans, many of whom suffer from PTSD, TBI, addictions, or psychological problems, every state should have a veteran-focused alternative-sentencing law on the books.

#### B. Veterans Courts

Similarly every state should establish specialized “veterans courts” that offer structured intervention and integrated services for veterans who are in the criminal justice system and who are strug-

<sup>98</sup>Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive Housing Program, 73 Fed. Reg. 25026 (May 6, 2008).

<sup>99</sup>*Id.* (VASH vouchers are administered in accordance with regulations for housing choice voucher program, which “pays monthly rental subsidies so that eligible families can afford decent, safe, and sanitary housing” of their own choosing).

<sup>100</sup>See 24 C.F.R. §§ 982.201 (2009) (income eligibility for Section 8 tenant-based assistance), 5.603(b) (“very low income”); see also Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive Housing Program, 73 Fed. Reg. 25026 (May 6, 2008) (“HUD-VASH eligible families are homeless veterans”).

<sup>101</sup>See CAL. PENAL CODE § 1170.9 (Deering 2009).

<sup>102</sup>*Id.* § 1170.9(d); see also *id.* § 1170.9(b) (court may order qualified defendant into treatment program); *id.* § 1170.9(f) (in making order, court shall give preference to treatment program that has “history of successfully treating combat veterans who suffer from post-traumatic stress disorder, substance abuse, or psychological problems as a result of that service”).

<sup>103</sup>A.B. 2586, § 1(c), Gen. Assem., Reg. Sess. (Cal. 2006) (approved by governor Sept. 29, 2006).

gling with mental illness and addictions. Such courts are based on successful drug and mental health court models, which allow defendants to avoid incarceration by participating in a court-based regimen of treatment and graduated sanctions.<sup>104</sup> The creation of veteran-specific treatment courts is based in part on the opinion of psychiatrists and law enforcement officials that the traumas of combat can lead to addiction and criminality.<sup>105</sup> These courts can be based on alternative sentencing statutes; for example, veterans courts in Orange and Santa Clara counties, California, are based on that state's alternative sentencing law discussed above.

Interest in establishing veterans courts is growing throughout the nation. Besides California, veterans courts are already operating in Buffalo, New York; Tulsa, Oklahoma; and Anchorage, Alaska, with several other jurisdictions opening or considering opening veterans courts this year.<sup>106</sup> Congress is working to encourage the spread of veterans courts through the proposed Services, Education, and Rehabilitation for Veterans (SERV) Act, which would provide \$25 million in funding for each of the next five years.<sup>107</sup>

Although we are pleased to see such great interest in veterans courts, we urge Congress and others to ensure that these new specialized courts are free to deliver treatment and services to the veterans who most desperately need them. However, the SERV Act, if enacted as written, may fail to do so. That is because courts funded by it would not be able to serve any veteran charged with an offense during the course of which "there occurred the use of force against the per-

son of another."<sup>108</sup> That limitation could keep many struggling veterans from getting the help they desperately need. For example, some combat veterans with severe, untreated PTSD may react with aggression—as they have been trained to do—when faced with a threatening or stressful situation. Those veterans' service to our nation would be poorly repaid indeed if we simply left them to languish in jail rather than giving them the opportunity to obtain court-supervised treatment.

Instead we believe that the proposed SERV Act or any other legislation should include special provisions that would allow the veteran to participate in a veterans court regardless of whether the crime involved a degree of violence where a court finds that (1) the veteran has served in a combat zone in the U.S. military; (2) the veteran has committed an offense that is likely the result of PTSD, TBI, substance abuse, or psychological problems stemming from service; and (3) the potential harm to society would be lessened if the veteran were to obtain treatment rather than be incarcerated. Such a provision would allow struggling combat veterans to obtain the help and supervision that they desperately need to heal and become productive members of society. Moreover, if a combat veteran's need for treatment were identified at the veteran's initial contact with the criminal justice system, then repeat offenses likely would be reduced.

All veterans courts should include government benefits review and advocacy services. Veterans courts often overlook this important opportunity, even though veterans with disabilities may be entitled

<sup>104</sup>See Editorial, *A Court for Veterans*, *NEW YORK TIMES*, June 4, 2008, [www.nytimes.com/2008/06/04/opinion/04wed4.html](http://www.nytimes.com/2008/06/04/opinion/04wed4.html); see also National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, *Drug Courts: The Second Generation 27–31* (June 2006), [www.ojp.usdoj.gov/nij/pubs-sum/211081.htm](http://www.ojp.usdoj.gov/nij/pubs-sum/211081.htm) (how successful drug courts can reduce recidivism and save taxpayer dollars).

<sup>105</sup>Nicholas Riccardi, *These Courts Give Wayward Veterans a Chance*, *LOS ANGELES TIMES*, March 10, 2009, <http://bit.ly/UiRJr>.

<sup>106</sup>*Id.*

<sup>107</sup>Services, Education, and Rehabilitation for Veterans Act (SERV Act), S. 902, 111th Cong. (2009); H.R. 2138, 111th Cong. (2009).

<sup>108</sup>SERV Act, S. 902 § 7(3); H.R. 2138 § 7(3).

to myriad benefits available through VA, the Social Security Administration, or other federal or state agencies. An expert in benefits advocacy should review veterans' eligibility and assist veterans in obtaining the benefits to which they are entitled. For many veterans, a small amount of benefits income could mean the difference between stability and suffering from hunger and homelessness.



Many of us would probably agree that “[h]omelessness does not happen in a vacuum” and that “no one thing ... causes homelessness”; and we would probably also agree that much needs to be done to end homelessness among

veterans. However, while “no one thing” will solve homelessness, the resources and programs that we discuss here could be a strong foundation to begin that effort. Accessing these vital services can help veterans achieve stability and lead healthier, more productive lives.

“[L]et us strive on,” as Lincoln once said, “to finish the work we are in, to bind up the nation’s wounds, [and] to care for him who shall have borne the battle.” Our mission is clear: we must be ever vigilant in our efforts to provide the best care and services to our veterans. In so doing, we begin to repay the debt that we as a nation owe to each veteran who unselfishly bore the battle.

## COMMENTS?

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—The Editors

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