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# **Serving Veterans in New York: New York's Courts, Laws, and Programs Uniquely Designed to Serve Veterans**

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**Monday, November 7, 2016**

**Albany, NY**

***CLE Course Materials and NotePad<sup>®</sup>***

*Complete course materials distributed in electronic format online in  
advance of the program.*

**Sponsored by the  
New York State Bar Association's Committee on Veterans**

This program is offered for education purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.

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# New York State Bar Association

## FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the  
program for your MCLE credit.**

**Serving Veterans in New York: New York's Courts, Laws, and Programs Uniquely  
Designed to Serve Veterans  
Monday, November 7, 2016 | New York State Bar Association's Committee on Veterans |  
New York State Bar Association, Albany, NY**

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

**Speaking Credit:** In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers and Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.





# NEW YORK STATE BAR ASSOCIATION

## Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments \_\_\_\_\_

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
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Additional comments (CONTENT)

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Additional comments (ABILITY)

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3. Please rate the program materials and include any additional comments.

☐ Excellent   ☐ Good   ☐ Fair   ☐ Poor

Additional comments

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4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded   ☐ Yes – Shortened   ☐ No – Fine as is

Additional comments

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5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

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6. How did you learn about this program?

☐ Ad in legal publication   ☐ NYSBA web site   ☐ Brochure or Postcard  
☐ Social Media (Facebook / Google)   ☐ Email   ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered

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NEWYORK STATE BAR ASSOCIATION

One Elk Street, Albany, NY 12207

Phone: 518-463-3200 | Secure Fax: 518.463.5993

# **Serving Veterans in New York: New York's Courts, Laws, and Programs Uniquely Designed to Serve Veterans**

Monday, November 7, 2016

10:00 am to 1:30 pm

Presented by:

The New York State Bar Association's Committee on Veterans

Moderator: Nancy Morgan

Presenters: Art Cody

Benjamin Pomerance

Christina Asbee

## **Veterans Defense Program**

*Art Cody, NY State Defenders Association*

- The Relationship between the Military Experience and the Justice Involved Veteran
- The Veterans Defense Program's Role
  - Areas of Effort
  - Progress
  - The Way Forward
- The Importance of a Trauma- informed Approach to Veteran's Cases in NY Criminal Courts.
- 

## **Below the Radar? NY Laws and Regulations for Veterans**

*Benjamin Pomerance, N Y State Division of Veterans' Affairs*

- Discussion of Various Veteran Specific Laws and Regulations in the areas of consumer protection, tax law, family law, civil service/employment law, health law, education law, and employment and retirement benefits.

## **How Can Veterans Access Assistive Technology**

*Christy Asbee, Disability Rights NY*

- Assistive Technology (AT) at home and in institutional settings
- AT in higher education
- AT in the workplace



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Serving Veterans in New York: New York's Courts, Laws,  
and Programs Uniquely Designed to Serve Veterans

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# Topic One

## Veterans Defense Program

Presented by Art Cody





## **NEW YORK STATE DEFENDERS ASSOCIATION VETERANS DEFENSE PROGRAM**



***Defending Veterans in Criminal Cases***  
**Captain Art C. Cody, U.S. Navy (Ret)**  
**Deputy Director, Veterans Defense Program**

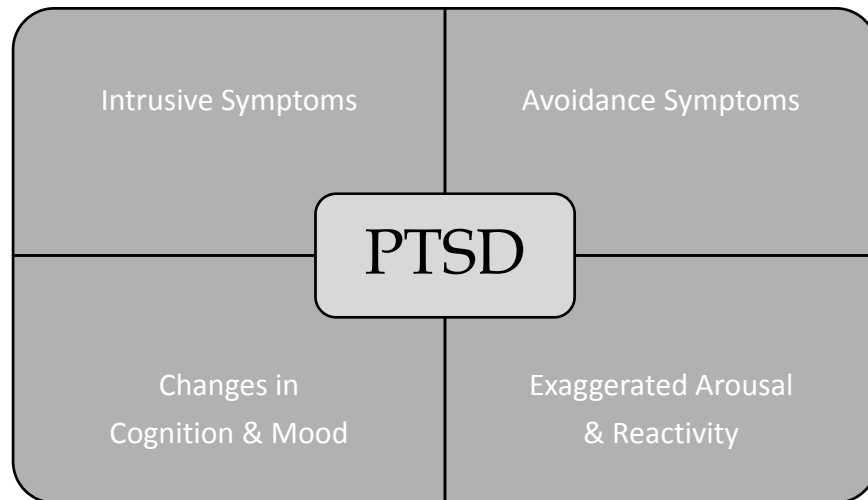
1

## **RETURNING VETERANS**

Many veterans who have returned from our wars, from Vietnam to present, are suffering from injuries and trauma such as Traumatic Brain Injury (TBI), Post Traumatic Stress Disorder (PTSD) and major depressive disorders which negatively affect their cognitive abilities and behaviors.

2

## INDICATORS OF POST TRAUMATIC STRESS DISORDER



3

## INDICATORS OF TRAUMATIC BRAIN INJURY (TBI)

TBI is an injury to the brain rather than an injury to the mind. Traumatic brain injury (TBI) is a blow or jolt to the head or a penetrating head injury that disrupts the function of the brain. Shock waves from explosive devices cause symptoms of a serious concussive injury.

**TBI**

While severe TBI can leave a person almost incapacitated, even mild TBI (mTBI) — also known as concussion — can lead to symptoms, including headaches, balance problems, hearing problems, lack of self-control, mood changes, ringing in the ears, problems sleeping and memory loss.

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## HOW MANY VETERANS ARE AFFECTED?

- ❑ Since 9/11, nearly 30 % of Iraq and Afghanistan War veterans treated at V.A. hospitals have been diagnosed with **Post Traumatic Stress Disorder** (PTSD).
- ❑ As of 2013, over 260,000 veterans from OIF and OEF have been diagnosed with **Traumatic Brain Injury** (TBI).
- ❑ 7% of veterans have **both** Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). Multiple diagnosis is often referred to as “**poly-trauma**”.
- ❑ 22 veterans a day are committing suicide, 8 are Viet Nam era veterans

Sources: RAND Study; veteransandsptsd.com; publichealth.va.gov/docs/epidemiology/ptsd-report

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## ***Porter v. McCollum, 558 U.S. 30 (2009):***

“[o]ur Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did. Moreover, the relevance of Porter’s extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter.” *Porter*, 558 US at 43.

6

## YOUR TYPICAL VETERAN?



7

## YOUR TYPICAL VETERAN



# ALWAYS TRAINING

Train – War / War – Train

Basic Training

Schooling

PT

Discipline

Combatives

Teamwork

Weapons/knives/hands/ground fighting



9

# DEPLOYMENTS

- ❑ Away from home
- ❑ Can not protect family
- ❑ Going to the unknown
- ❑ 13-20+ hour Work Days



10

# HOME FROM WAR

- ❑ Transition – first 6 mos.
- ❑ PTSD/TBI /depression
- ❑ Being home = the team is disabled (guilt)
- ❑ Family/Job has changed (Loss of mission/role)
- ❑ “I should just go back”
- ❑ Missing the Rush
- ❑ Substance Abuse



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## WHY A PROGRAM FOR VETERANS?

**SINCE 2001, THERE HAVE BEEN 2.28 MILLION DEPLOYMENTS TO IRAQ/AFGHANISTAN, MANY BEING MULTIPLE DEPLOYMENTS BY THE SAME SERVICE MEMBER.**

**Global War on Terrorism (GWOT)**  
Since September 11, 2001

**Operation Enduring Freedom (OEF)**  
Afghanistan-Since October 2001

**Operation Iraqi Freedom (OIF)**  
Iraq-March 2003-August 2010

**Operation New Dawn (OND)**  
Iraq-June 2010-December 2011

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## Veterans Defense Program

- ▣ New Program
  - Commenced in April, 2014
  - Staffed by 2 attorneys
    - Gary Horton – Retired Public Defender with significant vet experience
    - Art Cody (retired O6 USN)
- ▣ Based out of Batavia with offices in Albany, North Jersey
- ▣ Mission: Assisting defense attorneys to better represent veterans and members of the military in New York’s criminal and family courts.

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## Areas of Focus

- ▣ developing protocols and procedures for the identification and representation of veterans;
- ▣ training defense lawyers in identifying and presenting evidence connected to clients' military experience and resulting cognitive and behavioral consequences;
- ▣ providing backup for lawyers representing veterans;
- ▣ providing direct litigation support;
- ▣ providing assistance to public defense programs in developing partnerships with community resources for veterans; and
- ▣ developing veteran specific restorative justice programs.

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## Progress to Date

- ❑ Comprehensive legal assistance in over 160 veteran cases
- ❑ Trainings for over 1200 New York State lawyers defending veterans
- ❑ Expert guidance and referrals to over 450 veterans.
  
- ❑ Training Presentations at National Forums:
  - Office of the U.S. Courts x 3 (Mitigation Investigators, Trial Counsel, Capital Habeas)
  - National Association for Public Defense,
  - NAACP Legal Defense Fund
  - Multiple Federal Defender Services
  
- ❑ Endorsed by the Veteran Community:

70 veteran organizations, public defense programs and mental health groups, including the American Legion, AMVET, Marine Corps League, United War Veterans Council, National Alliance for Mental Illness NY, and a majority of county public defense programs, such as Brooklyn Defender Services, Ontario County Public Defender Office and Buffalo Legal Aid Society.

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## The Way Ahead

- ❑ Help More Downstate Veterans:
  - Open a Downstate Office
    - Fourteen county region, including New York City and Long Island.
    - Three criminal defense attorneys,
    - a family court attorney,
    - a case manager social worker
    - and an administrative support office worker.
  
- ❑ Expanding Statewide Services:
  - Provide training, expert legal assistance, protocols, procedures, and resources to over a thousand attorneys in county-based public defender offices, legal aid agencies, and assigned counsel representing veterans;
  - Provide direct litigation, legal assistance and expert case-specific support for over a hundred strategic veteran cases; and
  - Provide expert guidance and referrals to hundreds of justice-involved veterans.

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## INCARCERATION RATE FOR VETERANS

- ❑ 90,000 inmates released annually from U.S. prison and jails are veterans.
- ❑ 70% of incarcerated veterans are held on nonviolent crimes.
- ❑ The largest percentage of incarcerated veterans are Viet Nam era veterans. State Prisons 36% and Federal Prisons 39%.
- ❑ Veterans serve longer sentences, on average 22 months longer in jail than non-veterans.

Source: BJA

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## WHY HIGH RATE OF INCARCERATION ?

1. Judges, Prosecutors and sometimes even defense attorneys unaware of Defendant's Vet Status
2. Defense attorneys lack understanding of the effects of the PTSD, TBI, and major depression and/or are reluctant to argue these issues
3. Judges/juries do not understand the effects of Military related Mental Health injuries
4. Some areas of New York State do not have readily available treatment facilities for Vets and thus incarceration is seen as a good (or only) option.
5. Lack of recognition by defenders of military record resulting in poor sentencing memoranda.

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# THIS IS WHY

**“Defendant’s prior  
military service has  
been known to all  
parties since the  
commencement of  
these proceedings and  
has not been disputed”**



*John J. Brennan  
Family Court Judge*

STATE OF NEW YORK  
COUNTY COURT  
HERKIMER COUNTY OFFICE AND COURT'S FACILITY  
501 NORTH WASHINGTON STREET, SUITE 2501  
HERKIMER, NEW YORK 13350-2935  
(315) 867-1334  
FAX: (315) 867-1389

*Bart M. Carrig, Esq.  
Court Attorney*

*Rosa Ujick  
Secretary*

August 27, 2014

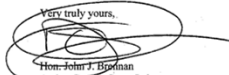
Hon. Jeffrey Carpenter  
Herkimer County District Attorney  
301 N. Washington Street  
Herkimer, New York 13350

Gary A. Horton, Esq.  
23 Jackson Street Suite 102  
Batavia, NY 14020

Re: People v. [Redacted]

Dear Mr. Horton:

The Court is in receipt of a "Notice of Motion" and supporting documents filed August 27, 2014 asking for an adjournment of sentencing so that counsel can obtain a copy of defendant's military service record. Defendant's prior military service has been known to all parties since the commencement of these proceedings and has not been disputed. That information can easily be provided by testimony or affidavit. Moreover, defendant's request is not a motion, but a request for an adjournment, which follows a series of eve of trial motions and even a post plea motion by the District Attorney. The matter will proceed as set forth in the scheduling letters.

Very truly yours,  
  
Hon. John J. Brennan  
Acting County Court Judge

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## Trauma Informed. . .

“I have reviewed your service history which was exemplary.”

“It pains me that someone with your history of service to our county is in this situation that you are in.”

DA: “what we most need for this defendant is for him to get 100% better.”

“Heal, Integrate, and become whole again as you provided a great service to this country. We are grateful for that and want this wonderful disposition for you.”

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## CONTACT US FOR HELP

**Gary A. Horton, Director**

New York State Defenders Association

*Veterans Defense Program*

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**Art Cody, Captain USN (Ret), Legal Director**

New York State Defenders Association

*Veterans Defense Program*

[acody@nysda.org](mailto:acody@nysda.org)

194 Washington Ave, Suite 500 Albany, NY 12210

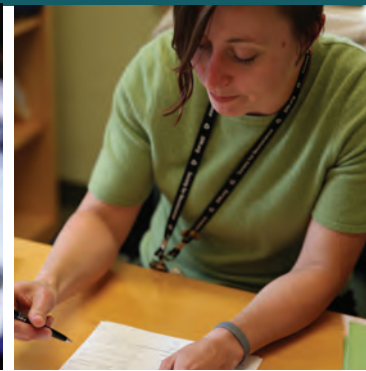
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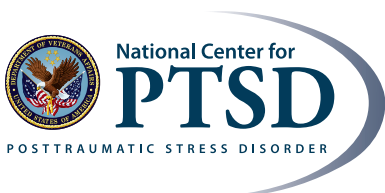
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# National Center for PTSD



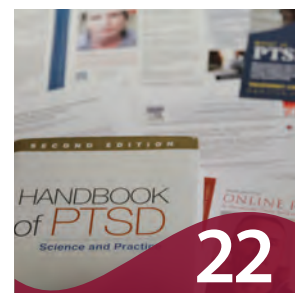
## Fiscal Year 2014 ANNUAL REPORT



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A version of the National Center for PTSD Fiscal Year 2014 Annual Report with all appendices, as well as each individual appendix, is available as a pdf document at [http://www.ptsd.va.gov/about/mission/annual\\_reports/index.asp](http://www.ptsd.va.gov/about/mission/annual_reports/index.asp).

# ACRONYMS

**CAP**

Consortium to Alleviate PTSD

**CAPS**

Clinician-Administered PTSD Scale

**CBCT**

Cognitive-Behavioral Conjoint Therapy

**CBT**

Cognitive-Behavioral Therapy

**CDC**

Centers for Disease Control and Prevention

**CNN**

Cable News Network

**CPT**

Cognitive Processing Therapy

**CSP**

Cooperative Studies Program

**DoD**

Department of Defense

**DRRI**

Deployment Risk and Resilience Inventory

**DSM**

*Diagnostic and Statistical Manual of Mental Disorders*

**GABA**

Gamma-Aminobutyric Acid

**GWAS**

Genome-Wide Association Study

**HPA**

Hypothalamic–Pituitary–Adrenal

**ICD**

International Classification of Diseases

**MHS**

Mental Health Services

**MIRECC**

Mental Illness Research, Education and Clinical Centers

**NVVRs**

National Vietnam Veterans Readjustment Survey

**OEF**

Operation Enduring Freedom

**OIF**

Operation Iraqi Freedom

**OND**

Operation New Dawn

**PBIN**

Practice-Based Implementation Network

**PCL**

PTSD Checklist

**PE**

Prolonged Exposure

**PERSIST**

Promoting Effective Routine and Sustained Implementation of Stress Treatments

**PILOTS**

Published International Literature on Traumatic Stress

**PTSD**

Posttraumatic Stress Disorder

**RCS**

Readjustment Counseling Service

**RORA**

Retinoid-Related Orphan Receptor Alpha

**SERV**

Survey of Experiences of Returning Veterans

**STAIR**

Skills Training in Affect and Interpersonal Regulation

**STRONG STAR**

South Texas Research Organizational Network Guiding Studies on Trauma and Resilience

**TBI**

Traumatic Brain Injury

**VA**

(Department of) Veterans Affairs

**VHA**

Veterans Health Administration

**WET**

Written Exposure Therapy





## LETTER FROM THE DIRECTOR

Since its inception the National Center has been the leader in research and education for helping those who are living with PTSD.

On August 29, 2014, the U.S. Department of Veterans Affairs (VA) National Center for Posttraumatic Stress Disorder (PTSD) celebrated its 25th anniversary. Since its inception the National Center has been the leader in research and education for helping those who are living with PTSD. I was privileged to be a part of the team that started the Center, and part of an ever-growing number of people working to further knowledge about consequences of being exposed to a traumatic event.

In 1984 Congress directed VA to form a National Center for PTSD “to carry out and promote the training of healthcare and related personnel in, and research into, the causes and diagnosis of PTSD and the treatment of Veterans for PTSD.” The proposal to create the National Center arose from the recognition of the growing mental health needs of Vietnam Veterans and others. VA established the National Center for PTSD in 1989 as a center of excellence that would set the agenda for research and education on PTSD. The diagnosis of PTSD had been formalized only nine years earlier, in the third edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders (DSM-III, 1980)*. The new diagnosis significantly increased research on the consequences of exposure to horrific, life-threatening events. In 2013 the American Psychiatric Association published revised criteria for the diagnosis of PTSD — reflecting advances in knowledge gained since the last revision of the criteria in 1994 and generating new research aimed at understanding the implications of the changes.

But science and education are not the only influences that have increased understanding of PTSD. Disasters, wars, and other traumatic high-profile events — the terrorist attacks on 9/11/2001, the subsequent wars in Iraq and Afghanistan, the 2011 tsunami and earthquake in Japan — all have helped to raise public awareness. Media reports on PTSD have played a role in creating awareness, too. I think this is a good thing. Veterans and other trauma survivors who have PTSD do not always understand their reactions, and even if they do, they might not know how to get help. Being informed about the symptoms of PTSD and the treatments available can help people with PTSD take the first steps toward seeking assistance.

# Our Mission

The mission of the National Center for PTSD is to advance the clinical care and social welfare of America's Veterans and others who have experienced trauma, or who suffer from PTSD, through research, education, and training in the science, diagnosis, and treatment of PTSD and stress-related disorders.

Another fundamental change over the past 25 years is an expansion of knowledge about how to treat PTSD. In 1989 few effective treatments had been identified. Many clinicians and their patients thought that PTSD was a disorder that had to be coped with. Now there are effective treatment options — psychotherapies and medications — that can help individuals with PTSD achieve meaningful improvements. VA has implemented national training programs for clinicians to enhance the availability of the most effective psychotherapies for PTSD to Veterans. Researchers are working to make existing treatments more effective and to develop even more effective treatments. And today, we can say with conviction that treatment works.

Technology is also playing a role by widening the distribution of information and access to treatment in multiple channels. For example, in 2011 the National Center partnered with the Department of Defense to create the first publicly available VA mobile app, the award-winning PTSD Coach. AboutFace — an online video gallery developed by the Center that features Veterans talking about living with PTSD and how treatment has turned their lives around — breaks down barriers around seeking care and reduces misconceptions about PTSD and its treatment. We are probably only at the beginning stages of figuring out how to use technology and social media to help individuals with PTSD.

[Integrity, Commitment, Advocacy, Respect, and Excellence \(I CARE\)](#) are the values that define “who the VA is” and the VA’s culture, and help guide the actions of staff across the VA. The National Center’s accomplishments and plans exemplify how we have supported and will continue to support these values. In 2012 the Center began a strategic planning process. Through this work, we identified Center-wide Operational Priorities to help us optimally serve the field and carry out the Center’s mission. These priorities inform areas of research and education focus and include (1) Biomarkers; (2) *DSM-5*; (3) Treatment efficiency, effectiveness, and engagement; (4) Care delivery, models of care, and system factors; and (5) Implementation. Although the Center has made great strides in research and education, we look forward to making even greater progress in promoting understanding of and advancing scientific knowledge about PTSD.

Dr. Paula P. Schnurr is the Executive Director of the National Center for Posttraumatic Stress Disorder and served as Deputy Executive Director of the Center since 1989. She is a Research Professor of Psychiatry at the Geisel School of Medicine at Dartmouth and Editor of the *Clinician's Trauma Update-Online*.



## MAJOR ACCOMPLISHMENTS

Since its beginning in 1989, the National Center for PTSD has maintained a strong commitment to improve the care of Veterans through research into the prevention, causes, assessment, and treatment of traumatic stress disorders and through education of Veterans, others affected by trauma, professionals, and policy makers.

Through the methodological rigor and collaborative nature of our research, we are dedicated to high professional standards of integrity, excellence, and respect. Our research activities have a uniquely real-world perspective that ensures we are truly Veteran-centric. As a result, the Center is adept at translating basic findings into clinically relevant techniques and at conducting research on the best ways to implement evidence-based practices into care.

Our efforts benefit from continually improving quality — ensuring excellence in the programs and materials we provide to Veterans, their families, and providers. Our respect for military culture and for individual circumstances of Veterans and others impacted by trauma informs all the work we do including the Center’s award-winning website ([www.ptsd.va.gov](http://www.ptsd.va.gov)), and our many publications, online resources, and national programs.

## Advancing the Scientific Understanding of PTSD

When the National Center opened, research on PTSD was in its early stages. PTSD had been added to the American Psychiatric Association’s official classification of mental disorders only nine years before. The National Vietnam Veterans Readjustment Survey (NVVRS) had just been published the previous year, “an incredibly important study scientifically, historically, and in terms of clinical policy moving forward,” says Matthew Friedman, MD, PhD, Senior Advisor and former Executive Director of the National Center. “It was the first time that any nation had attempted to use rigorous science to assess the consequences of military deployment to a war zone in terms of psychiatric sequelae,” continues Friedman. The survey documented a high prevalence of PTSD in Vietnam Veterans; for example, 30% of all male Veterans who had been deployed to Vietnam had experienced PTSD at some point. Of those, half still have PTSD. “It really underscored the fact that PTSD not only had severe consequences, but was a chronic condition and increased risk of other psychiatric problems,” says Friedman. The NVVRS raised major questions about the scope of the problem that researchers continue to grapple with today: who develops PTSD and why? What happens to people with PTSD over time? Early research started to address these questions to better identify and treat those affected.



# Key Milestones IN THE FIRST 25 YEARS

## 1989

Secretary of Veterans Affairs William Derwinski dedicates National Center for PTSD

At its first meeting, Center launches development of the Clinician Administered PTSD Scale (CAPS)

## 1990

First issues of *PTSD Research Quarterly* and *NCP Clinical Newsletter* are published by the Center

Center participates in first VA/DoD training conference to prepare for casualties from Operations Desert Storm and Desert Shield

## 1991

PILOTS (Published International Literature on Traumatic Stress) database is made publicly available by the Center; it provides a comprehensive cross-disciplinary index to all published research on trauma

## 1992

Center prepares to launch the Matsunaga Vietnam Veterans Project, a Congressionally mandated survey to assess the readjustment experiences of American Indian, Japanese American, and Native Hawaiian Veterans of the Vietnam War

## Epidemiology of PTSD

Less than a year after the National Center opened, Congress mandated the Center to assess the readjustment experiences of American Indian, Japanese American, and Native Hawaiian Veterans of the Vietnam War. The resulting Matsunaga Vietnam Veterans Project (named for Spark Matsunaga, the former U.S. senator from Hawaii who spearheaded the legislation mandating the study) found significant differences in PTSD prevalence among the groups. Specifically, Northern Plains, Southwest Indian, and Native Hawaiian Veterans had higher PTSD prevalence than did White Veterans; Japanese Americans had lower prevalence (Beals et al., 2002<sup>1</sup>; Friedman, Schnurr, Sengupta, Holmes, & Ashcraft, 2004<sup>2</sup>). Native American Veterans were more exposed to atrocities and combat in Vietnam compared with White Veterans, which seems to have contributed to increased PTSD prevalence in that study group. The study's results for Japanese American Veterans triggered many questions by researchers "such as, is there sometimes a cultural norm against acknowledging these kinds of problems?" says Friedman. Researchers continue to pursue these types of questions regarding ethnicity and PTSD.

With the increasing number of women in military service, the National Center recognized early on the need to examine trauma and PTSD in this population. Our



investigators published one of the first studies on the occurrence and negative impact of sexual harassment and assault in female military personnel (Wolfe et al., 1998<sup>3</sup>). More recent research has expanded the examination of sexual trauma to include male Servicemembers. For example, a study of Reservists indicated that although women are at greater risk for sexual

harassment, men might be more negatively affected when harassment is severe (Street, Stafford, Mahan, & Hendricks, 2008<sup>4</sup>). As a result of such findings the VA developed assessment tools for sexual assault, and implemented screening and counseling for military sexual trauma.

Studies with large samples and measurements over time are needed to fully understand the predisposing factors for PTSD and the effects of trauma. In 2003 National Center investigators began one of the largest longitudinal surveys of military personnel: the Neurocognition Deployment Health Study of recently deployed Veterans (Vasterling et al., 2006<sup>5</sup>). This study was one of the first longitudinal studies of military Veterans that included predeployment assessments. The researchers found that soldiers who had been deployed to Iraq were experiencing neurobiological compromise, "a neural alteration that happens when people are functioning under extreme stress," says Jennifer Vasterling, PhD, study principal investigator. "They had been back a couple of months and were still in this hyperaroused state." The researchers continue to study subsets of this Veteran cohort. Long-term studies are useful, says Vasterling, "because you can develop predictive models of risk factors for certain psychiatric disorders."

## Neurobiology of PTSD

The National Center has a strong legacy of basic science research into the neurobiological causes and correlates of PTSD. The ultimate aim of our basic science research, led by experts in the Clinical Neurosciences Division, is to improve assessment and treatment of Veterans and others affected by trauma. Center investigators were the first to demonstrate alterations in brain structure, function, and chemistry associated with PTSD. Dysregulation of the stress response system — the hypothalamic–pituitary–adrenocortical (HPA) axis — showed that HPA abnormalities in Veterans with PTSD were different compared with Veterans with depression (Yehuda et al., 1993<sup>2</sup>). Center investigators also found reduced hippocampal volume (Bremner et al., 1995<sup>2</sup>) and a smaller anterior cingulate cortex in Veterans with PTSD. These findings supported the argument that PTSD was a psychiatric disorder, which experts in the field were debating at the time.

The National Center has focused on identifying biomarkers associated with different expressions, or phenotypes, of PTSD. Findings from one key study suggest that a combination of genes involved in one particular neurotransmitter (serotonin) is associated with severity of two clusters of PTSD symptoms — arousal and re-experiencing — and might be a risk factor for PTSD (Pietrzak, Galea, Southwick, & Gelernter, 2013<sup>5</sup>). Center investigators also took part in the first comprehensive scan of DNA samples from many individuals: a Genome-Wide Association Study (GWAS) to see if there are any genetic differences between those with and those without PTSD. They found that a certain gene, called retinoid-related orphan receptor alpha (RORA), was associated with a higher risk of the disorder (Logue et al., 2013<sup>2</sup>). This study opened a new line of inquiry into the role the RORA gene plays in the brain. Mark Miller, PhD, principal investigator at the Center's Behavioral Science Division, says, "The GWAS findings got us thinking about molecular pathways and mechanisms we probably never would have thought about had we not found the association between RORA and PTSD."

## Improving the Assessment of PTSD

Accurate and up-to-date measures are crucial to advancing research on PTSD and the clinical care of Veterans living with PTSD. The development of the [Clinician-Administered PTSD Scale \(CAPS\)](#) was one of the first Center-wide projects. We developed the CAPS because we believed it was essential to moving the field forward, and it was. The CAPS rapidly facilitated reliable and valid PTSD assessment in research around the world (Weathers, Keane, & Davidson, 2001<sup>2</sup>).

**The development of the Clinician-Administered PTSD Scale (CAPS) was one of the first Center-wide projects. We developed the CAPS because we believed it was essential to moving the field forward, and it was.**

Since then, the National Center has expanded its resources by developing additional leading assessment measures for trauma and PTSD for use in the VA, the Department of Defense (DoD), and around the world. These include the [Primary Care-PTSD Screen](#) (Prins et al., 2003<sup>2</sup>) and the [PTSD Checklist](#) (Weathers, Litz, Herman, Huska, & Keane, 1993<sup>6</sup>). One of the most widely used measures of PTSD symptom severity, the PTSD Checklist is also useful for making a provisional PTSD diagnosis.

As the field's understanding of PTSD has evolved, so have the clinical criteria used to make a diagnosis. Within the newly revised *DSM-5*, PTSD was reclassified from an anxiety disorder to an event-related disorder

## 1993

The Women's Health Sciences Division and the Pacific Islands Division are created

The Scientific Institute on Ethnocultural Aspects of PTSD is cosponsored by the Center and the National Institute of Mental Health (NIMH)

## 1994

National training conference on African-American Veterans and PTSD, cosponsored by the Center and Readjustment Counseling Service (RCS)

## 1995

Center launches its website to disseminate information about PTSD to researchers, clinicians, Veterans, and the general public

Consensus Conference on PTSD Assessment, cosponsored by the Center and the NIMH

## 1996

Congressionally mandated study of PTSD in Native American and Asian-American Vietnam Veterans is completed by the Center; results are presented to Secretary of Veterans Affairs

Women's Health Sciences Division completes national survey of women Veterans' perceptions of VA health care

## 1997

VA Cooperative Study #420 is launched, the largest PTSD psychotherapy study ever conducted

Education Division (currently Dissemination & Training Division) completes *VA Disaster Mental Health Manual*

## 1998

National Disaster Mental Health Training Series is launched by the Center, in collaboration with RCS

## 1999

Center supports VA Headquarters in coordinating the VA PTSD/Primary Care Summit

## 2000

First practice guideline for PTSD is published by the International Society for Traumatic Stress Studies, with contributions from the Center

## 2001

Center develops and disseminates resources in response to the aftermath of the September 11 terrorist attacks at the World Trade Center and Pentagon

VA Cooperative Study #494, the first study of PTSD treatment for female Veterans, is launched

Congressionally mandated Military Sexual Trauma Project is launched by the Center

“because not all presentations of PTSD were consistent with conceptualizing the disorder in terms of simple fear or anxiety,” says Paula Schnurr, PhD, Executive Director of the National Center. Dr. Friedman and other Center investigators not only played a leading role in redefining PTSD within *DSM-5*, but also validated revised assessment measures and examined the impact of the new criteria on rates of the disorder. In one seminal study, a Center research team found that the new criteria yielded prevalence estimates of PTSD similar to those of *DSM-IV* in both a national community sample and a sample of trauma-exposed Veterans (Miller et al., 2013<sup>2</sup>).

Beyond PTSD-specific measures, National Center investigators developed the most comprehensive assessment instrument for war-related stress: the [Deployment Risk and Resilience Inventory](#) (DRRI). Although the DRRI was developed for use by researchers to assess various areas of psychosocial risk and resilience factors from across the deployment cycle, clinicians are increasingly using it as an adjunct assessment. The measure was updated to validate its scales with Veterans from recent conflicts in Iraq and Afghanistan (Vogt et al., 2013<sup>7</sup>). In addition to measuring combat exposure, the DRRI also includes three measures related to family functioning and social support. The focus on family functioning is one of the major advantages of the DRRI “because research shows that family stressors have implications for Veterans’ postdeployment health,” says Dawne Vogt, PhD, Acting Deputy Director of the Center’s Women’s Health Sciences Division.

The National Center has investigated and continues to investigate whether multimodal approaches to assessment might improve PTSD diagnosis. An early milestone in the Center’s research on assessment was VA Cooperative Study #344. A large-scale study, the project addressed whether psychophysiological changes — such as increased heart rate, sweating, and breathing — could differentiate Veterans with and without PTSD. In a sample of more than 1,000 Veterans seeking treatment in VA, investigators found that, on average, individuals with PTSD showed stronger, more distinctive physiological reactions to trauma cues, with the most impaired Veterans experiencing the highest levels of physiological reactivity. But some Veterans with PTSD did not show increased physiological reactivity (Keane et al., 1998<sup>2</sup>), a finding that encouraged additional research and led to increased understanding of the physiology and assessment of PTSD.

## Advancing the Treatment of PTSD

Among our highest priorities are supporting VA clinicians, and improving Veterans’ lives through development, research, and dissemination of evidence-based treatments for PTSD. Our investigators have conducted landmark studies on



cognitive-behavioral therapy (CBT) for PTSD, particularly the main evidence-based psychotherapies: Cognitive Processing Therapy (CPT) and Prolonged Exposure (PE).

The National Center has carried out the two largest randomized controlled trials of psychotherapy for PTSD ever conducted: (1) VA Cooperative Study #420, launched in 1997, which found no



difference between trauma-focused and present-centered group therapy for PTSD among male Vietnam Veterans (Schnurr et al., 2003<sup>2</sup>); and (2) VA Cooperative Study #494, launched in 2001, the first randomized controlled trial of treatment for PTSD in female Veterans and Servicemembers, which found that PE was more effective than present-centered therapy (Schnurr et al., 2007<sup>2</sup>). A smaller Center-led VA study added support to CPT for the treatment of military-related PTSD (Monson et al., 2006<sup>2</sup>). These studies showed definitively that “we have reliable, evidence-based treatments that work,” says Schnurr.

National Center researchers have also led advances in the delivery of evidence-based PTSD treatments and in novel psychotherapeutic approaches. Studies that support CBT delivered via teleconferencing (Morland et al., 2010<sup>2</sup>) and in an



Internet-based, therapist-assisted format (Litz, Engel, Bryant, & Papa, 2007<sup>2</sup>) have helped increase access to PTSD treatment nationwide. Another Center-developed innovation, cognitive-behavioral conjoint therapy (CBCT), sought to meet the needs of Veterans and others with PTSD struggling with intimate relationship issues or who want their partners directly involved in their PTSD care. A randomized

controlled trial showed CBCT for PTSD alleviates distress, decreases PTSD symptom severity, and improves relationship satisfaction (Monson et al., 2012<sup>2</sup>).

The National Center has a strong commitment to psychopharmacology research trials as well. A multisite study by Center investigators found that sertraline, an antidepressant previously shown to work in civilian populations, was ineffective for Veterans with PTSD (Friedman, Marmar, Baker, Sikes, & Farfel, 2007<sup>2</sup>). More recently, the results of VA Cooperative Study #504 (Krystal et al., 2011<sup>2</sup>), launched in 2004, indicated that an atypical antipsychotic agent, risperidone, did not add any benefits to existing pharmacological treatment for PTSD — a finding that led to revisions of the [\*VA/DoD Clinical Practice Guideline for the Management of Posttraumatic Stress\*](#), which describes critical decision points in the management of PTSD and outlines the evidence behind different treatments. Trials testing novel agents that specifically address PTSD are needed, according to Friedman. “What I see looking down the road is research on medications that work on the biological systems we know are dysregulated in PTSD,” he says, such as inflammation markers or other neurosteroids or neuropeptides.

## Promoting Implementation of Evidence-Based Care

The National Center was instrumental in the development of the [\*VA/DoD Clinical Practice Guideline for the Management of Posttraumatic Stress\*](#). The guideline offers clinicians essential information on how to provide consistent quality of care and utilization of resources throughout the health care system. However, the development and dissemination of state-of-the-art tools and products are not sufficient to change practice. “We’ve increasingly recognized that dissemination

## 2002

Usage of the Center’s website more than doubles, as professionals and laypersons seek information on disaster mental health following 9/11 attacks

Interagency summit on Early Intervention Following Mass Casualties is led by the Center

## 2003

The *Iraq War Clinician Guide* is released by the Center to prepare VA and DoD to serve personnel returning from Iraq

Research on the use of telehealth to care for Veterans in remote locations initiated by the Center

## 2004

Center co-leads development of the *VA/DoD Clinical Practice Guideline for the Management of Posttraumatic Stress*

VA Cooperative Study #504 on the effectiveness of risperidone for PTSD is launched

## 2005

Center completes *Psychological First Aid*, a manual that provides evidence-based guidance for first responders, and disseminates it online to help responders to Hurricane Katrina

## 2006

*PTSD 101*, a comprehensive online PTSD training curriculum, is launched

## 2006 cont.

Center leads VA's national training initiative on Cognitive Processing Therapy

## 2007

Findings from Cooperative Study #494 are published; they show that Prolonged Exposure is effective for female Veterans with PTSD

Center leads VA's national training initiative on Prolonged Exposure

*Clinician's Trauma Update-Online (CTU-Online)*, a bimonthly electronic research newsletter, is published by the Center

## 2008

The PTSD Mentoring Program, started by the Center, supports VA PTSD program administrators and facilitates best practices in PTSD care for Veterans

Center and DoD collaborate on STRONG STAR Multidisciplinary Research Consortium, aimed at developing effective interventions to prevent and treat combat-related PTSD in active-duty military personnel

## 2009

The first online toolkit for nonclinical professionals who come in contact with Veterans and other trauma survivors is made available by the Center

VA Cooperative Study #566 is funded; it supports long-term follow-up of a cohort of Iraq War Veterans initially assessed prior to their first deployment

is not enough," says Schnurr, "and in order to ensure the uptake of treatment, it's important also to facilitate implementation and expand our training programs for therapists."

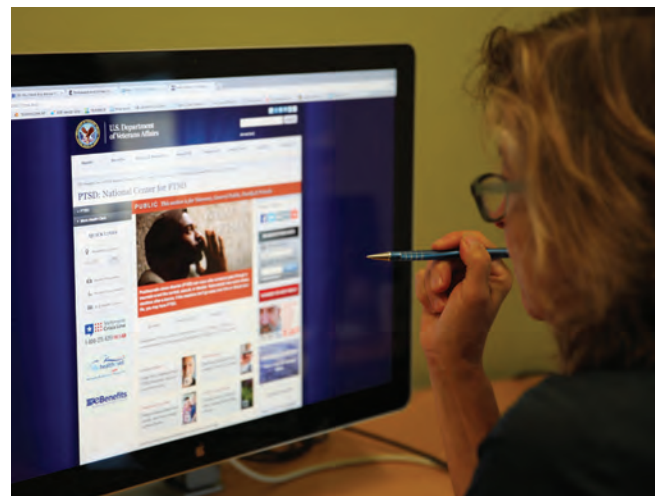
**"The data from this study provided real-world information on patients who were treated while the therapists were learning the treatment. So at the very beginning, with novice therapists learning the treatment, we saw very meaningful improvements."**

To make evidence-based treatment for PTSD widely available to Veterans across the United States, the VA created national clinical training programs in [CPT](#) (launched in 2006) and [PE](#) (launched in 2007). The National Center led the development and implementation of both programs. As of January 2015, there were nearly 2,000 VA providers trained to deliver PE and more than 6,000 VA and Vet Center providers trained to deliver CPT. Our evaluation of the PE training initiative showed that both PTSD and depression improved significantly for Veterans regardless of gender, war era, or trauma type (Eftekhari et al., 2013<sup>2</sup>). "The data from this study provided real-world information on patients who were treated while the therapists were learning the treatment. So at the very beginning, with novice therapists learning the treatment, we saw very meaningful improvements," says Schnurr. "This study strongly validated our training program for therapists." The evaluation of the CPT training program, led by Center collaborator Kathleen Chard, PhD, has found similarly positive outcomes (Chard, Ricksecker, Healy, Karlin, & Resick, 2012<sup>8</sup>).

Online training offers great potential to widely disseminate proven clinical practices. However, there is little information about how to conduct online training to help providers learn and implement new skills. Investigators from the National Center and the New England Research Institutes report encouraging findings from a randomized controlled trial testing a Web-based cognitive-behavioral skills training for PTSD providers. Results suggest that online training, especially with consultation, has potential for large health care systems such as VA (Ruzek et al., 2014<sup>9</sup>).

## Pioneering the Use of Technology in Education

The National Center is internationally known as the leader in development of technology-based education and resources for trauma survivors. In 1995 we launched our website, [www.ptsd.va.gov](http://www.ptsd.va.gov). The initial purpose of the website was to



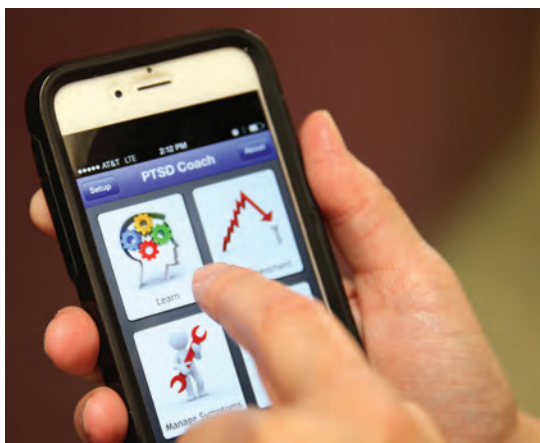
provide widespread access to the [Published International Literature on Traumatic Stress](#) (PILOTS) online database, a comprehensive, cross-discipline index to all published works on trauma. Starting with just 2,000 records, when it was first made publicly available in 1991, PILOTS now includes more than 53,000 records, with materials in 30 languages.



PILOTS is produced within the Center's PTSD Resource Center, the world's largest collection of literature on traumatic stress.

Early online offerings included fact sheets and other materials about PTSD and its treatment, geared toward providers. Through innovative programming and design, we have widened the scope of our website — with online manuals, mobile apps, toolkits, and videos — and it is now one of the world's leading websites on PTSD for professionals, Veterans, and the public. In fiscal year (FY) 2014, our website had more than five million unique page views (averaging 422,000 views per month); and the mobile site had nearly 72,000 views (averaging 6,000 views per month). Recent offerings for Veterans, their families, and the public include [Understanding PTSD](#), [Understanding PTSD Treatment](#), and the [Returning from the War Zone Guides](#).

As mobile apps have become an integral part of our everyday lives, the National Center has been at the forefront in the application of this technology for PTSD and



co-occurring problems. Starting with [PTSD Coach](#), released in 2011, the National Center has continued to create iOS and Android [apps for the public and providers](#). Our apps are evidence-informed, using cognitive-behavioral and other tested principles to help users self-manage symptoms and to augment professional care.

In 2010 the National Center entered the social media arena by establishing a [Twitter](#) feed. We launched our [Facebook](#) page

the following year, and established a presence on [YouTube](#) in 2012. We quickly recognized that social media offers great promise as a tool for communication and education. With social media we can deliver our products to new audiences and provide real-time resources when disasters and other large-scale traumatic events occur. Social media has also opened up an interactive communication channel with our audiences, enabling us to gain insights into the concerns and experiences of trauma survivors, and to respond to their questions. The “social” part of social media is also crucial, as those who engage with us share our resources with their own networks of friends, family, and colleagues.

## Outreach to Professionals

To better, the National Center has moved from passive dissemination strategies toward active outreach. And we have developed mechanisms to make new scientific findings and evidence-based treatments easily accessible.

National Center staff present regularly on national VA calls and at professional meetings to disseminate information. Since 2013 we have made the [continuing education courses](#) in our popular *PTSD 101* curriculum available as podcasts, so providers can learn about assessment and treatment of PTSD at their convenience. With our PTSD Consultation Lecture Series, which is archived following each live broadcast, providers can keep current on the latest clinical findings and best practices for PTSD care.

## 2010

Congress designates June 27 as PTSD Awareness Day (S. Res. 455) and the Center launches its first annual PTSD outreach campaign

*Skills for Psychological Recovery*, an intervention for postdisaster survivors, is published by the Center in collaboration with the National Child Traumatic Stress Network

Center contributes to the revised VA/DoD *Clinical Practice Guideline for the Management of Posttraumatic Stress*

## 2011

The VA PTSD Consultation Program is established to advise VA staff on PTSD and to promote the use of evidence-based practice

*PTSD Coach*, VA's first mobile phone app, is released by the Center and DoD's National Center for Telehealth & Technology

Findings from VA Cooperative Study #504 are published. They show that risperidone is not effective for treatment-resistant PTSD, leading to a revision of the VA/DoD *Clinical Practice Guideline for the Management of Posttraumatic Stress*

## 2012

*PTSD Coach Online*, an expanded desktop version of the popular *PTSD Coach* app, is made available by the Center

*AboutFace*, a website offering videos of Veterans' stories of PTSD and how treatment turned their lives around, is launched by the Center

## 2012 cont.

*PE Coach*, the first treatment companion app, is released by the Center and DoD's National Center for Telehealth & Technology

## 2013

DSM-5 versions of the CAPS and the PTSD Checklist are released by the Center

Center assists in VA's response to the Sandy Hook school shooting by providing training and consultation to local providers

The University of Texas Health Science Center and the National Center for PTSD receive the Consortium to Alleviate PTSD award, a 5-year, \$45 million research initiative funded by VA and DoD to improve understanding and treatment of PTSD

## 2014

*What is PTSD?*, the Center's first Whiteboard video, debuts on YouTube

VA Cooperative Study #591, a 17-site trial to compare the effectiveness of Prolonged Exposure and Cognitive Processing Therapy for Veterans, is launched

Center receives Congressional funding to expand the PTSD Consultation Program to non-VA providers and to establish the National PTSD Brain Bank, the first brain tissue repository to advance PTSD research

The National Center also produces publications aimed at disseminating novel information to the field. The [Clinician's Trauma Update-Online](#) is an electronic

### The National Center has moved from passive dissemination strategies toward active outreach.

newsletter that provides clinicians with summaries of peer-reviewed articles, with an emphasis on the assessment and treatment of Veterans. Published six times a year, the newsletter had more than 34,000 subscribers at the end of FY 2014. The [PTSD Research Quarterly](#), with more than 50,000 subscribers, provides expert reviews of the scientific PTSD literature. Topics

covered in FY 2014 included the dissociative subtype of PTSD, partial PTSD, DSM-5 and the upcoming ICD-11, and adjustment to mass shootings.

## Looking Towards the Future

To optimally serve the field and carry out the National Center's mission, we continued to align our research portfolio in FY 2014 with the Operational Priorities identified the previous year. These priorities include (1) Biomarkers; (2) DSM-5; (3) Treatment efficiency, effectiveness, and engagement; (4) Care delivery, models of care, and system factors; and (5) Implementation. Each priority reflects a critical area for development in both research and education.

<sup>1</sup> Beals, J., Manson, S. M., Shore, J. H., Friedman, M., Ashcraft, M., Fairbank, J. A., & Schlenger, W. E. (2002). [The prevalence of posttraumatic stress disorder among American Indian Vietnam veterans: Disparities and context](#). *Journal of Traumatic Stress*, 15, 89-97. doi:10.1023/A:1014894506325

<sup>2</sup> See **Top 25 National Center Publications**, 1989-2014 on pages 13-14

<sup>3</sup> Wolfe, J., Sharkansky, E. J., Read, J. P., Dawson, R., Martin, J. A., & Ouimette, P. C. (1998). [Sexual harassment and assault as predictors of PTSD symptomatology among U.S. female Persian Gulf War military personnel](#). *Journal of Interpersonal Violence*, 13, 40-57. doi:10.1177/088626098013001003

<sup>4</sup> Street, A. E., Stafford, J., Mahan, C. M., & Hendricks, A. (2008). [Sexual harassment and assault experienced by Reservists during military service: Prevalence and health correlates](#). *Journal of Rehabilitation Research and Development*, 45, 409-419. doi: 10.1682/JRRD.2007.06.0088

<sup>5</sup> Pietrzak, R. H., Galea, S., Southwick, S. M., & Gelernter, J. (2013). [Examining the relation between the serotonin transporter 5-HTTLPR genotype x trauma exposure interaction on a contemporary phenotypic model of posttraumatic stress symptomatology: A pilot study](#). *Journal of Affective Disorders*, 148, 123-128. doi:10.1016/j.jad.2012.11.003

<sup>6</sup> Weathers, F. W., Litz, B. T., Herman, D. S., Huska, J. A., & Keane, T. M. (October, 1993). *The PTSD Checklist (PCL): Reliability, Validity, and Diagnostic Utility*. Paper presented at the Annual Convention of the International Society for Traumatic Stress Studies, San Antonio, TX.

<sup>7</sup> Vogt, D. S., Smith, B. N., King, L. A., King, D. W., Knight, J. A., & Vasterling, J. J. (2013). [Deployment Risk and Resilience Inventory-2 \(DRRI-2\): An updated tool for assessing psychosocial risk and resilience factors among service members and Veterans](#). *Journal of Traumatic Stress*, 26, 710-717. doi:10.1002.jts.21868

<sup>8</sup> Chard, K. M., Ricksecker, E. G., Healy, E. T., Karlin, B. E., & Resick, P. A. (2012). [Dissemination and experience with cognitive processing therapy](#). *Journal of Rehabilitation Research and Development*, 49, 667-678. doi:10.1682/JRRD.2011.10.0198

<sup>9</sup> Ruzek, J. I., Rosen, R. C., Garvert, D. W., Smith, L. D., Sears, K. C., Marceau, L., . . . Stoddard, A. M. (2014). [Online self-administered training of PTSD treatment providers in cognitive-behavioral intervention skills: Results of a randomized controlled trial](#). *Journal of Traumatic Stress*, 27, 703-711. doi:10.1002/jts.21977



## TOP 25 NATIONAL CENTER PUBLICATIONS\*



### The development of a clinician-administered PTSD scale

Blake, D. D., Weathers, F. W., Nagy, L. M., Kaloupek, D. G., Gusman, F. D., Charney, D. S., & Keane, T. M. (1995). *Journal of Traumatic Stress*, 8, 75-90. doi:10.1002/jts.2490080106 [View Article](#)

### MRI-based measurement of hippocampal volume in patients with combat-related posttraumatic stress disorder

Bremner, J. D., Randall, P. K., Scott, T. M., Bronen, R. A., Seibyl, J. P., Southwick, S. M., ... Innis, R. B. (1995). *American Journal of Psychiatry*, 152, 973-981. doi:10.1176/ajp.152.7.973 [View Article](#)

### Effectiveness of national implementation of prolonged exposure therapy in Veteran Affairs care

Eftekhari, A., Ruzek, J. I., Crowley, J. J., Rosen, C. S., Greenbaum, M. S., & Karlin, B. E. (2013). *Journal of the American Medical Association Psychiatry*, 70, 949-955. doi:10.1001/jamapsychiatry.2013.3 [View Article](#)

### Randomized, double-blind comparison of sertraline and placebo for posttraumatic stress disorder in a Department of Veterans Affairs setting

Friedman, M. J., Marmar, C. R., Baker, D. G., Sikes, C. R., & Farfel, G. M. (2007). *Journal of Clinical Psychiatry*, 68, 711-720. doi:10.4088/JCP.v68n0508 [View Article](#)

### The Hawaii Vietnam Veterans Project: Is minority status a risk factor for posttraumatic stress disorder?

Friedman, M. J., Schnurr, P. P., Sengupta, A., Holmes, T., & Ashcraft, M. (2004). *Journal of Nervous and Mental Disease*, 192, 42-50. doi:10.1097/01.nmd.0000105999.57129.ee [View Article](#)

### Utility of psychophysiological measurement in the diagnosis of posttraumatic stress disorder: Results from a Department of Veterans Affairs cooperative study

Keane, T. M., Kolb, L. C., Kaloupek, D. G., Orr, S. P., Blanchard, E. B., Thomas, R. G., ... Lavori, P. W. (1998). *Journal of Consulting and Clinical Psychology*, 66, 914-923. doi:10.1037//0022-006X.66.6.914 [View Article](#)

### Posttraumatic stress disorder in a national sample of female and male Vietnam veterans: Risk factors, war-zone stressors, and resilience-recovery variables

King, D. W., King, L. A., Foy, D. W., Keane, T. M., & Fairbank, J. A. (1999). *Journal of Abnormal Psychology*, 108, 164-170. doi:10.1037/0021-843X.108.1.164 [View Article](#)

### Adjunctive risperidone treatment for antidepressant-resistant symptoms of chronic military service-related PTSD: A randomized trial

Krystal, J. H., Rosenheck, R. A., Cramer, J. A., Vessicchio, J. C., Jones, K. M., Vertrees, J. E., ... Stock, C.: Veterans Affairs Cooperative Study No. 504 Group. (2011). *Journal of the American Medical Association*, 306, 493-502. doi:10.1001/jama.2011.1080 [View Article](#)

### A randomized, controlled proof-of-concept trial of an internet-based, therapist-assisted self-management treatment for posttraumatic stress disorder

Litz, B. T., Engel, C. C., Bryant, R. A., & Papa, A. (2007). *American Journal of Psychiatry*, 164, 1676-1684. doi:10.1176/appi.ajp.2007.06122057 [View Article](#)

### A genome-wide association study of post-traumatic stress disorder identifies the retinoid-related orphan receptor alpha (RORA) gene as a significant risk locus

Logue, M. W., Baldwin, C., Guffanti, G., Melista, E., Wolf, E. J., Reardon, A. F., ... Miller, M. W. (2013). *Molecular Psychiatry*, 18, 937-942. doi:10.1038/mp.2012.113 [View Article](#)

### The prevalence and latent structure of proposed DSM-5 posttraumatic stress disorder symptoms in U.S. national and veteran samples

Miller, M. W., Wolf, E. J., Kilpatrick, D., Resnick, H., Marx, B. P., Holowka, D. W., ... Friedman, M. J. (2013). *Psychological Trauma: Theory, Research, Practice and Policy*, 5, 501-512. doi:10.1037/a0029730 [View Article](#)

### Effect of cognitive-behavioral couple therapy for PTSD: A randomized controlled trial

**Monson, C. M., Fredman, S. J., Macdonald, A.,** Pukay-Martin, N. D., **Resick, P. A., & Schnurr, P. P.** (2012). *Journal of the American Medical Association*, 308, 700-709. doi:10.1001/jama.2012.9307 [View Article](#)

### Cognitive processing therapy for veterans with military-related posttraumatic stress disorder

**Monson, C. M., Schnurr, P. P., Resick, P. A., Friedman, M. J., Young-Xu, Y., & Stevens, S. P.** (2006). *Journal of Consulting and Clinical Psychology*, 74, 898-907. doi:10.1037/0022-006X.74.5.898 [View Article](#)

### Relationships among plasma dehydroepiandrosterone sulfate and cortisol levels, symptoms of dissociation, and objective performance in humans exposed to acute stress

**Morgan, C. A., Southwick, S. M., Hazlett, G., Rasmusson, A. M., Hoyt, G., Zimolo, Z., & Charney, D.** (2004). *Archives of General Psychiatry*, 61, 819-825. doi:10.1001/archpsyc.61.8.819 [View Article](#)

### Telemedicine for anger management therapy in a rural population of combat veterans with posttraumatic stress disorder: A randomized noninferiority trial

**Morland, L. A., Greene, C. J., Rosen, C. S., Foy, D., Reilly, P., Shore, J., ... Frueh, B. C.** (2010). *Journal of Clinical Psychiatry*, 71, 855-863. doi:10.4088/JCP.09m05604blu [View Article](#)

### Naltrexone and disulfiram in patients with alcohol dependence and comorbid post-traumatic stress disorder

**Petrakis, I. L., Poling, J., Levinson, C., Nich, C., Carroll, K., Ralevski, E., & Rounsaville, B.** (2006). *Biological Psychiatry*, 60, 777-783. doi:10.1016/j.biopsych.2006.03.074 [View Article](#)

### The primary care PTSD Screen (PC-PTSD): Development and operating characteristics

**Prins, A., Ouimette, P., Kimerling, R.,** Cameron, R. P., Hugelshofer, D. S., Shaw-Hegwer, J., ... Sheikh, J. (2003). *Primary Care Psychiatry*, 9, 9-14. doi:10.1185/135525703125002360 [View Article](#)

### A randomized clinical trial to dismantle components of Cognitive Processing Therapy for posttraumatic stress disorder in female victims of interpersonal violence

**Resick, P. A., Galovski, T. E., Uhlmansiek, M. O. B., Scher, C. D., Clum, G. A., & Young-Xu, Y.** (2008). *Journal of Consulting and Clinical Psychology*, 76, 243-258. doi:10.1037/0022-006X.76.2.243 [View Article](#)

### Cognitive behavioral therapy for posttraumatic stress disorder in women: A randomized controlled trial

**Schnurr, P. P., Friedman, M. J.,** Engel, C. C., Foa, E. B., Shea, M. T., Chow, B. K., ... **Bernardy, N.** (2007). *Journal of the American Medical Association*, 297, 820-830. doi:10.1001/jama.297.8.820 [View Article](#)

### Randomized trial of trauma-focused group therapy for posttraumatic stress disorder : Results from a department of Veterans Affairs cooperative study

**Schnurr, P. P., Friedman, M. J., Foy, D. W.,** Shea, M. T., Hsieh, F. Y., Lavori, P. W., ... **Bernardy, N. C.** (2003). *Archives of General Psychiatry*, 60, 481-489. doi:10.1001/archpsyc.60.5.481 [View Article](#)

### Abnormal noradrenergic function in posttraumatic stress disorder

**Southwick, S. M., Krystal, J. H., Morgan, C. A., Johnson, D. R., Nagy, L. M., Nicolaou, A. L., ... Charney, D. S.** (1993). *Archives of General Psychiatry*, 50, 266-274. doi:10.1001/archpsyc.1993.01820160036003 [View Article](#)

### Neuropsychological outcomes of Army personnel following deployment to the Iraq War

**Vasterling, J. J., Proctor, S. P., Amoroso, P., Kane, R., Heeren, T., & White, R. F.** (2006). *Journal of the American Medical Association*, 296, 519-529. doi:10.1001/jama.296.5.519 [View Article](#)

### Gender differences in combat-related stressors and their association with postdeployment mental health in a nationally representative sample of U.S. OEF/OIF veterans

**Vogt, D., Vaughn, R., Glickman, M. E.,** Schultz, M., Drainoni, M.L., Elwy, R., & Eisen, S. (2011). *Journal of Abnormal Psychology*, 120, 797-806. doi:10.1037/a0023452 [View Article](#)

### Clinician-administered PTSD scale: A review of the first ten years of research

Weathers, F. W., **Keane, T. M.,** & Davidson, J. R. T. (2001). *Depression and Anxiety*, 13, 132-156. doi:10.1002/da.1029 [View Article](#)

### Enhanced suppression of cortisol following dexamethasone administration in posttraumatic stress disorder

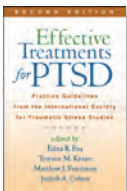
Yehuda, R., **Southwick, S. M., Krystal, J. H.,** Bremner, D., **Charney, D. S.,** & Mason, J. W. (1993). *American Journal of Psychiatry*, 150, 83-86. doi:10.1176/ajp.150.1.83 [View Article](#)

\* Author names in boldface indicate affiliation with the National Center.





## TOP 10 NATIONAL CENTER BOOKS\*



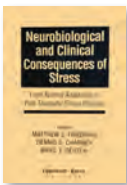
### Effective treatments for PTSD: Practice guidelines from the International Society for Traumatic Stress Studies (2nd ed.)

Foa, E. B., **Keane, T. M.**, **Friedman, M. J.**, & Cohen, J. A. (Eds.) (2009). New York, NY: Guilford Press.



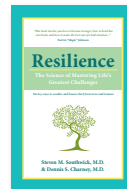
### Trauma and health: Physical health consequences of exposure to extreme stress

**Schnurr, P. P.**, & Green, B. L. (Eds.) (2004). Washington, DC: American Psychological Association.



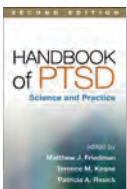
### Neurobiological and clinical consequences of stress: From normal adaptation to posttraumatic stress disorder

**Friedman, M. J.**, **Charney, D. S.**, & Deutch, A. Y. (Eds.) (1995). Philadelphia, PA: Lippincott-Raven.



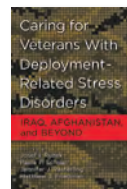
### Resilience: The science of mastering life's greatest challenges

**Southwick, S. M.**, & Charney, D. S. (Eds.) (2012). New York, NY: Cambridge University Press.



### Handbook of PTSD: Science and practice (2nd ed.)

**Friedman, M. J.**, **Keane, T. M.**, & **Resick, P. A.** (Eds.) (2014). New York, NY: Guilford Press.



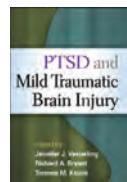
### Caring for veterans with deployment-related stress disorders: Iraq, Afghanistan, and beyond

**Ruzek, J. I.**, **Schnurr, P. P.**, **Vasterling, J. J.**, & **Friedman, M. J.** (Eds.) (2012). Washington, DC: American Psychological Association.



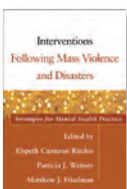
### Gender and PTSD

**Kimerling, R.**, Ouimette, P., **Wolfe, J.** (Eds.) (2002). New York, NY: Guilford Press.



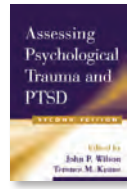
### PTSD and mild traumatic brain injury

**Vasterling, J. J.**, Bryant, R. A., & **Keane, T. M.** (Eds.) (2012). New York, NY: Guilford Press.



### Interventions following mass violence and disasters: Strategies for mental health practices.

Ritchie, E. C., **Watson, P. J.**, & **Friedman, M. J.** (Eds.) (2007). New York, NY: Guilford Press.



### Assessing psychological trauma and PTSD (2nd ed.)

Wilson, J. P. & **Keane, T. M.** (2004). New York, NY: Guilford Press.

\* Author names in boldface indicate affiliation with the National Center.



## RECENT MAJOR INITIATIVES

The National Center has made great strides in PTSD research and education. The diversity of our initiatives during the past few years speaks to the leadership role we play in informing the prevention, assessment, and treatment of PTSD. The VA [I CARE](#) values of Integrity, Commitment, Advocacy, Respect, and Excellence guide this work.

Our reach and our ambitions have grown. The insights gained from our research inform daily clinical practice. Training has expanded from brief courses to comprehensive curricula and expert consultation on PTSD to any provider working with Veterans. Outreach efforts have matured, resulting in a dynamic website with interactive content and mobile offerings.

As we look forward to the next 25 years, we will continue to pursue multiple paths to achieve the goal of enhancing the clinical care and social welfare of those who have experienced trauma.

### **Increasing Scientific Understanding of Trauma and PTSD**

The key to improving care is advancing our understanding of the neurobiology of trauma and PTSD.

#### ***Genetics of PTSD: Analysis of RORA and Other Candidate Genes in PTSD***

The National Center is continuing its pioneering work on the role of the RORA gene in the development of PTSD (see page 7). The research team is now conducting a more detailed genetic analysis of RORA and PTSD to: (1) identify the complete array of genetic variation in these genes associated with PTSD risk, (2) perform genome-wide expression analysis, (3) analyze additional PTSD-related comorbidity phenotypes, and (4) examine possible gene-gene interactions.

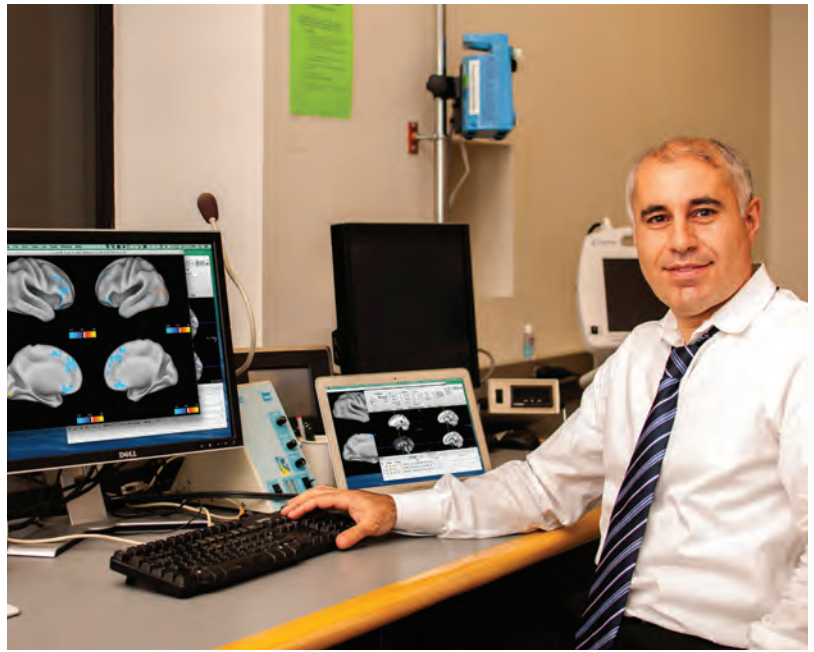
#### ***The Consortium to Alleviate PTSD***

In 2013 President Obama announced a \$45 million award over five years to establish the [Consortium to Alleviate PTSD \(CAP\)](#). The National Center partnered with the STRONG STAR Consortium at the University of Texas Health Science Center at San Antonio to successfully compete for this award. The funding will advance PTSD care for Servicemembers and Veterans. The CAP will provide an array of cutting-edge clinical treatment trials and biological studies including efforts to learn more about the biology/physiology of PTSD development, treatment response to inform diagnosis, prediction of disease outcome, and new or improved treatment methods.



## **The VA PTSD Brain Bank**

Currently there are more than 50 brain banks in the United States. The focus of these brain tissue repositories is on investigating alcoholism, Alzheimer's disease, depression, schizophrenia, and a variety of neurological disorders. Yet there has never been a [PTSD brain bank](#) — until now. With funding appropriated by Congress, the National Center is leading a consortium to develop a national PTSD brain bank — the first brain tissue repository dedicated to studying the physical impact of stress, trauma, and PTSD on brain tissue. Projects overseen by the consortium will advance scientific knowledge about PTSD, particularly biological indicators (biomarkers) associated with the disorder. Dr. Friedman is Director of the consortium, which includes the Uniformed Services University of Health Sciences, the VA Medical Center in San Antonio and in Boston, and the National Center's Behavioral Science and Clinical Neurosciences Divisions.



## **Understanding the Longitudinal Course of PTSD**

Examining how PTSD develops and changes over time reveals risk and protective factors, as well as effects of the disorder.



### ***VA Cooperative Study #566: Neuropsychological and Mental Health Outcomes of Operation Iraqi Freedom (OIF)***

The VA Cooperative Studies Program funded the latest wave of followup in the Neurocognition Deployment Health Study, which has been examining the psychological impact of war zone stress (including PTSD and TBI) in male and female active duty Army soldiers since 2003 (see page 6). The latest wave of data collection was completed in June 2014, with more than 600 cohort members participating.

### ***Project VALOR: Veterans After-Discharge Longitudinal Registry***

The first registry of combat-exposed men and women with PTSD aims to: (1) identify clinical characteristics, risk factors, and comorbidities, (2) describe and evaluate

neuropsychological and psychosocial outcomes and treatment trajectories, and (3) compare an undiagnosed group of Veterans who are high health care users with nondeployed Veterans. The registry will provide essential data on the natural history of PTSD including progression, remission, and outcomes associated with the disorder.

### ***SERV Registry: Survey of Experiences of Returning Veterans***

A longitudinal cohort study, the SERV Registry aims to determine differences in how male and female combat Veterans readjust to civilian life after deployment by tracking Veterans' use and continuity of care, physical and psychiatric comorbidity, and medication use and adherence since 2002. As of April 2015 a total of 711 Veterans (480 men and 231 women) have been enrolled. Results will help identify gaps in and barriers to services.

## Enhancing Care for PTSD

Although we have effective psychotherapies for PTSD, care will be advanced when we understand what works best for whom and offer proven alternative delivery methods. Patient-centered care will also be optimized when new medication options are identified.

### **VA Cooperative Study #591: Comparative Effectiveness Research in Veterans with PTSD (CERV-PTSD)**

The National Center is currently leading a \$10 million study that will compare PE and CPT, and will help answer whether one treatment is better suited than the other for specific types of patients. Launched in early FY 2014, VA Cooperative Study #591 is the first large-scale comparative effectiveness trial of treatment for PTSD. The study, which will involve 900 Veterans at 17 sites across the country, will help VA leadership, providers, and Veterans in making informed choices about PTSD care in VA, and will also be broadly relevant to the scientific and clinical communities outside VA.



### **Novel Approaches to Treatment Delivery**

Two National Center studies examine new delivery methods for PTSD treatment to give patients a range of choices. The first extends our work in telehealth by comparing three ways to provide PE to Veterans with PTSD: in-home in-person, in-home teleconferencing, and in-clinic teleconferencing. If PE can be effectively delivered in these diverse ways, patients will be able to use the option that best suits their needs. A second trial compares Written Exposure Therapy (WET), a brief treatment that requires minimal therapist involvement, with CPT. If results are positive, WET could be an alternative trauma-focused treatment for patients who prefer to write about, rather than talk about, their trauma.

### **Novel Pharmacological Approaches**

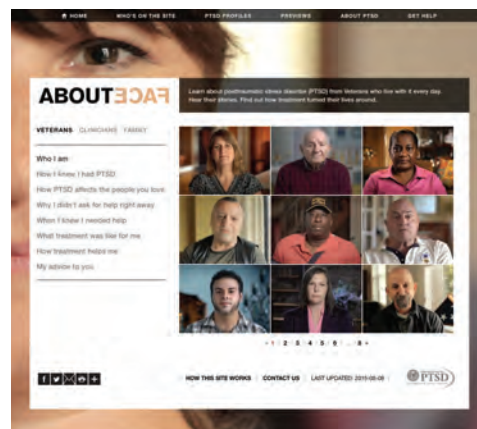
The most effective medications for PTSD are selected types of antidepressants that work by increasing two important brain neurotransmitters: serotonin and norepinephrine. Other types of medication might offer even more effective alternatives. National Center investigators are planning a trial of ketamine, which is typically used for sedation but also has rapid antidepressant effects, for treating PTSD in active duty military personnel and Veterans who do not respond to antidepressant treatment. The trial is part of the CAP award. A second study is examining the safety and efficacy of URB597, a compound that increases the brain's production of endocannabinoids, which reduce depression and pain. The same group of investigators is also examining a substance that works on glutamate, the most abundant neurotransmitter in the brain, and important for learning and memory. Lastly, Center investigators completed data collection in a clinical trial of ganaxolone, a steroid that might help alleviate PTSD due to its effects on gamma-aminobutyric acid (GABA), a neurotransmitter that helps regulate anxiety and fear.

## Promoting Awareness of PTSD and Engagement in Evidence-based Treatment

The first step in encouraging treatment engagement is helping people recognize that they might have a problem that can be helped with treatment.

### **AboutFace**

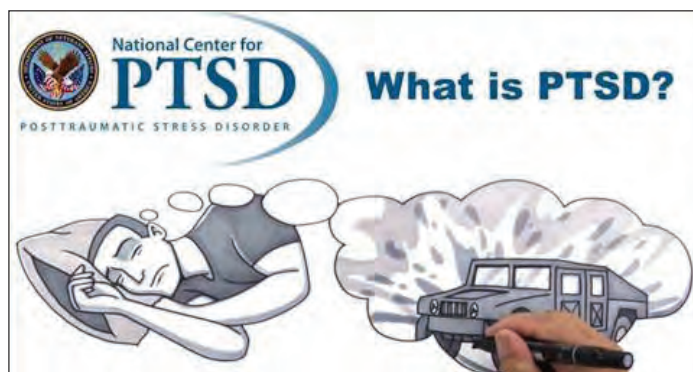
For those trauma survivors who develop troubling symptoms, it can be difficult to take the first step to get care. The National Center created [AboutFace](#) to help Veterans and other trauma survivors learn about people who have successfully overcome stigma and other treatment obstacles. *AboutFace* is an award-winning online video gallery of Veterans telling their stories of how PTSD treatment has turned their lives around. Since its 2012 launch, *AboutFace* has expanded to include videos from family and friends of Veterans with PTSD, along with insights from clinicians who treat PTSD.





## Animated Whiteboard Videos

Our collection of six short, hand-drawn, animated videos gives Veterans, family members, professionals, and the general public an accurate and accessible overview of the assessment and treatment of PTSD. Five of the six videos target a public audience: [What is PTSD?](#); [Prolonged Exposure for PTSD](#); [Cognitive Processing Therapy for PTSD](#); [PTSD Treatment: Know Your Options](#); and ["Evidence-based" Treatment: What Does It Mean?](#) The final video, [Prescribing for PTSD: Know Your Options](#), is for providers and includes information about screening for PTSD, prescribing, and referring for psychotherapy.



## Developing Self-Help and Treatment Companion Resources

The National Center offers trauma survivors innovative tools that are grounded in science.

### Mobile Phone Applications

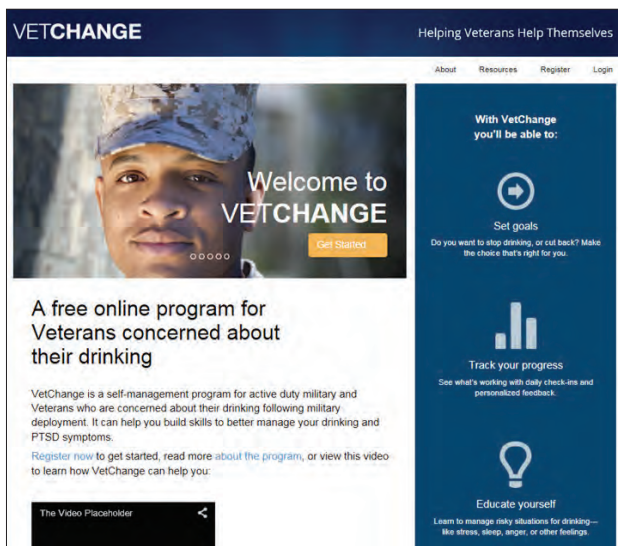
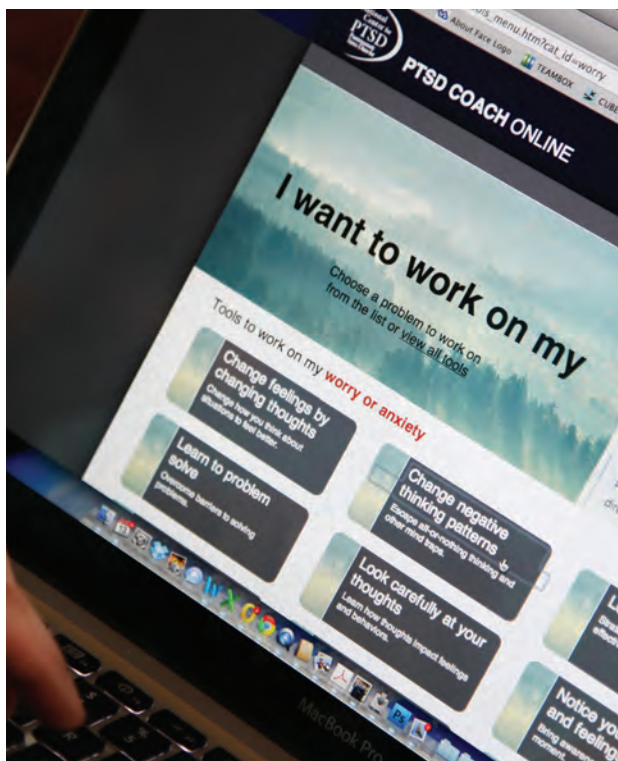
In 2011 the National Center partnered with the DoD to launch the first publicly available VA app, [PTSD Coach](#). The app offers users self-assessment, coping skills, and other resources, and has received numerous awards. The Center has continued to develop a wide array of apps, including self-help tools and apps that support the delivery of PE, CPT, and CBT for insomnia. Apps provide users with information and assistance wherever they are and whenever they need it. Like all our products, National Center apps are distributed for free.

### PTSD Coach Online

Inspired by the enthusiastic response to the *PTSD Coach* app, we created [PTSD Coach Online](#), a suite of evidence-informed, Web-based tools to help users cope with symptoms like anger, sadness, anxiety, and trouble sleeping. In addition to integrating many elements from the *PTSD Coach* app, *PTSD Coach Online* includes tools that allow users create in-depth plans to tackle the issues they are facing. Integrating video, animation, audio, and interactivity, *PTSD Coach Online* helps those impacted by stress and trauma help themselves.

### VetChange

Heavy drinking is a common problem in Veterans of the most recent conflicts; and research has shown that Veterans who struggle with problematic drinking patterns often have PTSD symptoms as well. *VetChange*, an online self-management program for Veterans concerned about their drinking, addresses both issues. A randomized controlled trial of an initial version of *VetChange* showed that the intervention helped many Veterans reduce their drinking and PTSD symptoms. A new version — with enhanced interactivity, video tips, and responsive design — is slated for release in 2015.



## Educating Professionals about Evidence-based PTSD Care

Online resources give providers within VA and in the community on-demand access to free training.

### Continuing Education Courses

Educating VA providers in the assessment and treatment of PTSD and related issues is vital to the National Center's mission. Our [continuing education resources](#) are all freely available online, making them accessible to not only providers within VA but also community-based providers, researchers, trainees, and paraprofessionals. Our flagship *PTSD 101* series offers a broad array of hour-long courses that are available both online and as podcasts. The lecture series *From the War Zone to the Home Front*, a collaboration with the Red Sox Foundation and the Massachusetts General Hospital Home Base Program, features on-demand lectures on topics relevant to caring for Veterans of the Iraq and Afghanistan wars and their families.



Within the past five years, we have expanded our Web-based continuing education offerings to include advanced multimodule courses on specialized treatment approaches. These courses incorporate video vignettes, step-by-step guidance, and patient materials that can help providers integrate these interventions into their practice. Currently available courses include [STAIR: Skills Training in Affect and Interpersonal Regulation](#) and [Assessment and Treatment of Sleep Problems in PTSD](#). Soon-to-be-released courses include *Managing Anger* and *Clinician-Administered PTSD Scale-5 (CAPS-5) Online Training for Providers*.

### Comprehensive Toolkits

Our [toolkits](#) feature fact sheets, handouts, and tutorials to give professionals in a variety of disciplines one-stop access to key resources to help address the needs of the Veterans they serve. Going beyond a focus purely on PTSD, the toolkits cover broader mental health, medical, employment, and educational aspects of Veterans' lives. The *Community Provider Toolkit*, *VA Campus Toolkit*, and *Veterans Employment Toolkit* are currently available online, and additional toolkits are in development.



### Provider Resources to Help Address the Needs of Women Veterans

Women are the fastest-growing group within the Veteran population. The National Center has taken the initiative to better address their needs, both as patients and as research participants. The online course *Caring for Women Veterans*, available on the Center's [intranet](#), aims to help VA providers understand common issues that arise in the medical and mental health care of female Veterans. A second online offering, [Conducting Research with Women Veterans](#), provides suggestions for study recruitment, research design, data analysis, and reporting results from projects involving women Veterans.

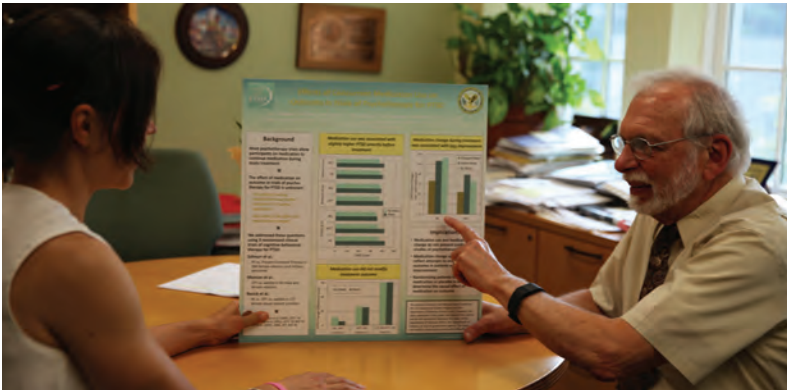


## Supporting the Implementation of Evidence-based PTSD Care

These initiatives encourage adoption of evidence-based practices by providers and clinic managers, and the systems in which they work.

### ***PTSD Consultation Program***

Launched in 2011 the [PTSD Consultation Program](#) connects VA providers working within any clinic or setting with expert PTSD consultants. The program's consultants are available via phone and email, providing information about treating Veterans with PTSD and answering questions related to the disorder. A 61% increase in consults from FY 2013 to FY 2014 demonstrates the program's impressive growth. This growth will continue as the program begins offering consultation and resources to non-VA providers who see Veterans in the community, starting in 2015.



### ***VA PTSD Mentoring Program***

PTSD program directors throughout VA face myriad challenges to effective delivery of PTSD treatments to the Veterans seen in their clinics. In 2008 the National Center initiated the VA PTSD Mentoring Program to connect program directors with seasoned mentors within their regions. Mentors work with PTSD program directors to help them meet the increased demand for treatment by restructuring existing programs, and by implementing best administrative and clinical practices.

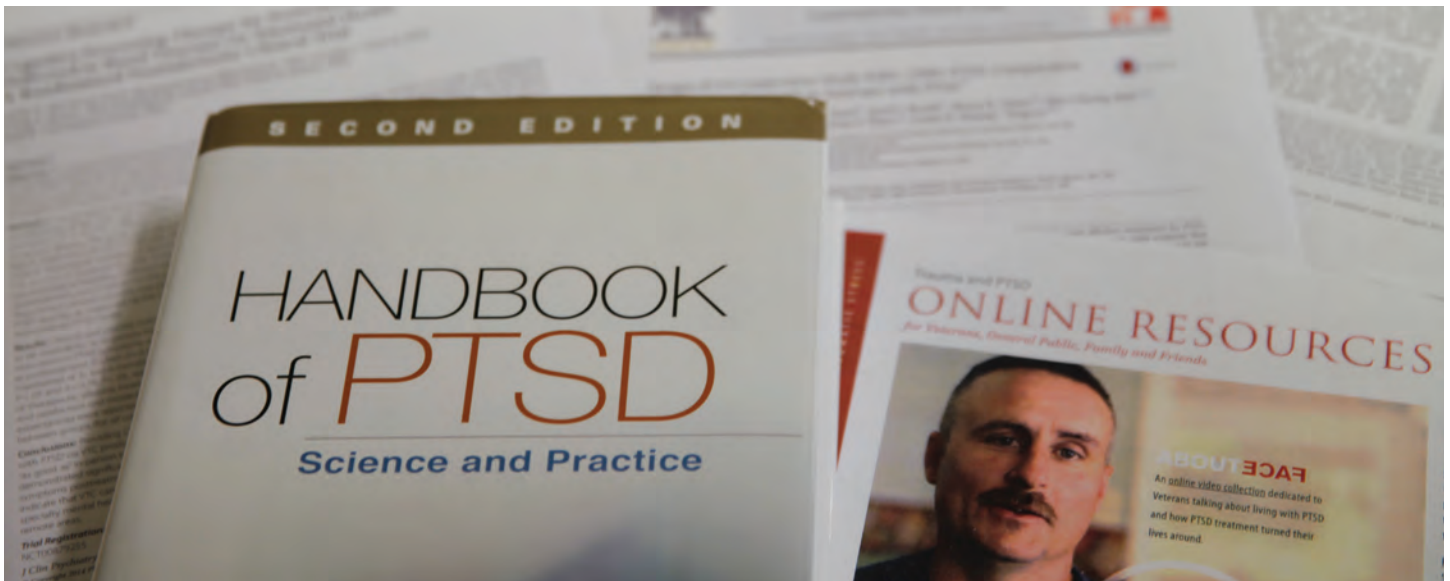
### ***Promoting Effective, Routine, and Sustained Implementation of Stress Treatments (PERSIST)***

The ongoing PERSIST research project, launched in 2013, provides the Veterans Health Administration (VHA) with information about factors that interfere with and promote adoption and sustained use of evidence-based psychotherapies for PTSD (PE and CPT). The study will also yield a clinical tool to help provider teams in specialized PTSD outpatient programs and community-based outpatient clinics more readily identify challenges associated with delivery of evidence-based psychotherapies and actionable solutions to those challenges.

### ***Practice-Based Implementation Network (PBIN) in Mental Health***

National Center researchers are implementing a practice-based implementation network by bringing together VA and DoD clinicians, clinic managers, and implementation scientists to put into practice new treatments and to facilitate the adoption of improvements across systems of care. The project will identify system-specific barriers and facilitators to adoption of mental health best practices. The first practice the PBIN will work to improve is the routine implementation of patient outcomes monitoring, a vital but underused element in ensuring high-quality PTSD care.





## FISCAL YEAR 2014 AT A GLANCE

### Research Overview

In FY 2014, the National Center research portfolio included 109 research grants – including small single-site studies,

**In 2014, Center investigators produced 228 print publications (journal articles, book chapters, and books) and had another 168 in-press and advance online publications.**

large multisite projects, research training fellowships, and research infrastructure grants – with nearly \$130 million in total award funding. A narrative description of research initiatives at

each of the Center divisions is provided in Appendix A. The Center's FY 2014 research and other funding is provided in Appendix B.

Research productivity at the National Center illustrates the breadth and depth of our scientific pursuits and our impact within the PTSD field. In FY 2014, Center investigators produced 226 print publications (journal articles, book chapters, and books) and had another 168 in-press and advance online publications. The Center also continued to be well represented on the editorial boards of leading journals and at professional meetings and conferences, contributing to more than 263 scientific presentations in FY 2014. Comprehensive lists of our publications, scientific presentations, and editorial board activities can be found in Appendices C, D, E, and F.

### Education Overview

The National Center's educational programs span the dissemination and implementation continuum. Activities in FY 2014 included educational presentations at national conferences and to specific groups, clinical demonstration projects, national consultation, and regional/national trainings of providers and paraprofessionals. We continued our involvement in several VA-wide provider training programs including PE and CPT for PTSD. Highlights from the FY 2014 educational program portfolio and associated funding are provided in Appendix B. A listing of educational presentations by Center staff and affiliates are in Appendix G.

The National Center's educational products in FY 2014 highlight innovations in technology as well as our commitment to increasing provider use of and patient engagement in evidence-based PTSD care. We made

**The National Center's educational programs span the dissemination and implementation continuum.**

treatment guides and newsletters, mobile applications, online courses, videos, social media channels, and online toolkits.

available or are in the process of developing a wide variety of products for VA and community providers, Veterans, families, and the general public. Products include

## Communications Overview

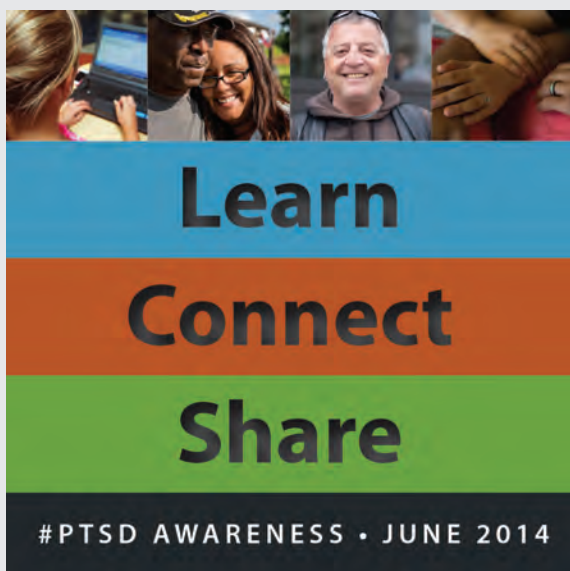
The National Center utilizes diverse online communication strategies to disseminate information and share resources. Our website, [www.ptsd.va.gov](http://www.ptsd.va.gov), had more than six million views in FY 2014. We maintained a strong social media presence, ending the FY with more than 18,000 Twitter followers and a Facebook page with more than 83,000 fans. We also continued to share information through our *PTSD Monthly Update*, an electronic newsletter with more than 84,000 subscribers. The newsletter focuses on a different theme in each issue, highlighting relevant Center products for professionals and the general public.

Even as our reach has expanded with the use of new media, traditional communication channels continue to play an important role in information dissemination. As media interest in PTSD grows each year, National Center staff are increasingly called upon to provide accurate information

and context when PTSD and traumatic events are in the news. Just in the past two years, we have responded to more than 80 inquiries from leading newspapers, television channels, and popular magazines. Center leadership and staff have been interviewed by reporters from diverse media outlets, including *TIME Magazine*, *The Boston Globe*, CNN, Al Jazeera America, and Vermont Public Radio.

And, when leaders and policy makers in VA, the DoD, and other federal agencies need insight into research and practice related to PTSD, they turn to the National Center for PTSD. So too do their international counterparts. Consultations include a wide variety of activities, from responding to a phone call or email, to serving on a task force or work group, to participating onsite in the aftermath of a natural disaster.

## Raising PTSD Awareness



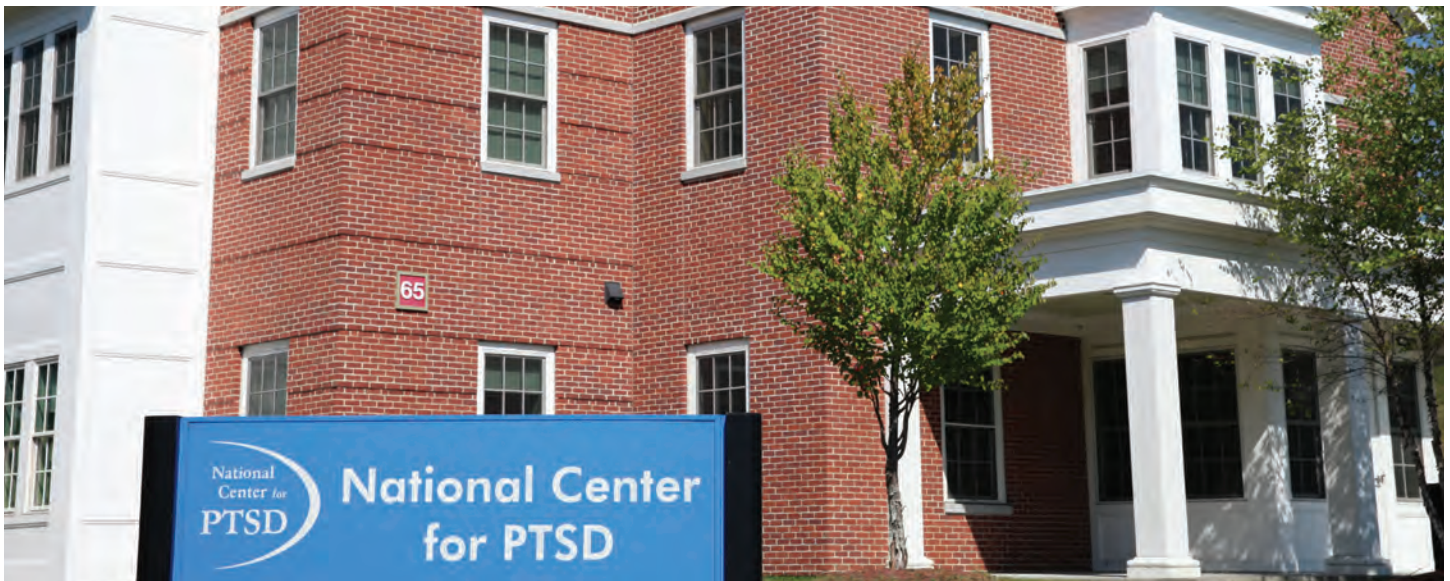
The National Center promotes awareness of PTSD and effective treatments throughout the year. In 2010 Congress named June 27th PTSD Awareness Day (S. Res. 455). This year the Senate designated the full month of June for National PTSD Awareness (S. Res. 481), continuing a practice that had begun in 2013. Efforts are under way to continue this designation in future years.

Our efforts around PTSD Awareness Month expanded in 2014. We collaborated with more than 36 organizations and departments to implement a national online and networking campaign to promote raising PTSD awareness. Recognizing the continuing growth and importance of social media, the campaign centered on the theme “#PTSD Awareness — Learn. Connect. Share.” We created the hashtag “#PTSD Awareness” to encourage widespread sharing of the message through social media channels.

In May 2014 we launched a dedicated PTSD Awareness section of our website to provide materials that organizations and individuals could use to raise PTSD awareness throughout June. We developed and disseminated flyers, social media posts, screen savers, and email marketing bulletins. We also encouraged events and postings at VA facilities and public locations across the country.

During the month of June, traffic to our website increased substantially from previous months, with page views for the full site topping 500,000 for the month. We also met our goal to increase Facebook *Likes*. Thanks to extensive outreach and social networking, our *Likes* grew to 66,700 by the end of PTSD Awareness Month — a 91% increase from the prior year’s campaign.





## ABOUT THE NATIONAL CENTER FOR PTSD

The Center was developed with the ultimate purpose of improving the wellbeing, status, and understanding of Veterans in American society.

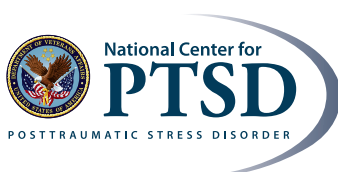
### History

The National Center for PTSD was created in 1989 within the Department of Veterans Affairs in response to a Congressional mandate (PL 98-528) to address the needs of Veterans and other trauma survivors with PTSD. The Center was developed with the ultimate purpose of improving the well-being, status, and understanding of Veterans in American society. The mandate called for a center of excellence that would set the agenda for research and education on PTSD without direct responsibility for patient care. Convinced that no single VA site could adequately serve this unique mission, VA established the Center as a consortium of five divisions.

### Organization

The National Center now consists of seven VA academic centers of excellence across the United States, with headquarters in White River Junction, Vermont. Other divisions are located in Boston, Massachusetts; West Haven, Connecticut; Palo Alto, California; and Honolulu, Hawaii; and each contributes to the overall Center mission through specific areas of focus.

The National Center for PTSD is an integral and valued component of the VA's Mental Health Services (MHS), which itself is within the VHA. MHS and the Center receive budget support from VA, although the Center also leverages this support through successful competition for extramural research funding.



# LEADERSHIP IN FISCAL YEAR 2014



## **Paula P. Schnurr, PhD**

Executive Director, [Executive Division](#), VT

Research Professor of Psychiatry, Geisel School of Medicine at Dartmouth

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## **John H. Krystal, MD**

Division Director, [Clinical Neurosciences Division](#), CT

Robert L. McNeil, Jr. Professor of Translational Research and Chairman of the Department of Psychiatry, Yale University School of Medicine

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## **Matthew J. Friedman, MD, PhD**

Senior Advisor and founding Executive Director, Executive Division, VT

Professor of Psychiatry and of Pharmacology and Toxicology, Geisel School of Medicine at Dartmouth

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## **Josef Ruzek, PhD**

Division Director, [Dissemination and Training Division](#), CA

Professor (Clinical Professor-Affiliated), Stanford University; Associate Professor, Palo Alto University

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## **Jessica L. Hamblen, PhD**

Acting Deputy Executive Director and Deputy for Education, Executive Division, VT

Associate Professor of Psychiatry, Geisel School of Medicine at Dartmouth

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## **Amy Street, PhD**

Acting Division Director, [Women's Health Sciences Division](#), MA

Associate Professor of Psychiatry, Boston University School of Medicine

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## **Rani Hoff, PhD, MPH**

Division Director, [Evaluation Division](#), CT  
Director of the Northeast Program Evaluation Center

Professor of Psychiatry, Yale University School of Medicine

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## **James Spira, PhD, MPH**

Director, [Pacific Islands Division](#), HI

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## **Terence M. Keane, PhD**

Division Director, [Behavioral Science Division](#), MA

Professor of Psychiatry and Assistant Dean for Research, Boston University School of Medicine

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National Institute of Mental Health

### **Robert Ursano, MD**

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VA Clinical Science Research & Development

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# VA Traumatic Brain Injury Veterans Health Registry Report

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*Cumulative from 1<sup>st</sup> Qtr FY 2002 through 4<sup>th</sup> Qtr FY 2013  
(October 2001 through September 2013)*

**Released May 2015**

## **Developed by:**

Epidemiology Program  
Post-Deployment Health Group (10P3A)  
Office of Public Health  
Veterans Health Administration  
Department of Veterans Affairs; and

Rehabilitation and Prosthetic Services (10P4R)  
Office of Patient Care Services  
Veterans Health Administration  
Department of Veterans Affairs; and

Defense and Veterans Brain Injury Center  
Department of Defense

## **In conjunction with:**

The Traumatic Brain Injury National Data and Statistical Center at Craig Hospital<sup>1</sup>,  
funded by the National Institute on Disability and Rehabilitation Research (NIDRR)  
Office of Special Education and Rehabilitative Services  
Department of Education; and

Intellica Corporation

## **Interagency Agreement Reference Numbers:**

VA798-12-X0063 (Department of Veterans Affairs) and ED-OSE-14-K-0007 (NIDRR/Department of Education)

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# TBI VETERANS HEALTH REGISTRY REPORT

## Executive Summary

At the direction of Congress, the Department of Veterans Affairs (VA) maintains the VA Traumatic Brain Injury (TBI) Veterans Health Registry that includes information about Veterans who served in Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), or Operation New Dawn (OND), who exhibit symptoms associated with TBI and seek care or benefits from the VA. From October 2001 through September 2013, a total of 221,895 Veterans have entered the VA TBI Veterans Health Registry.

Veterans in the VA TBI Veterans Health Registry are captured by any one or combination of three methods: 1) the VA TBI Screen, 2) diagnostic codes in electronic medical records (EMR), and 3) the disability benefit file. The majority of VA TBI Veterans Health Registry cases (84%) have been identified through the VA TBI Screen which is administered when OEF/OIF/OND Veterans seek VA health care: 143,913 (65%) answered four screening questions affirmatively, indicating they were exposed to a traumatic event and experienced a loss or alteration of consciousness as well as symptoms associated with TBI which remained present at the time of the screen; an additional 41,524 (19%) reported during the screen that they had already been diagnosed as having a TBI during OEF/OIF/OND deployment. EMR with TBI diagnoses identified 114,322 (52%) Veterans. This group was hospitalized 11,208 times and was seen 600,019 times as outpatients where a TBI diagnosis appeared in the visit record. The disability claim files identified 77,665 (35%) Veterans. Of these cases filing TBI related claims, 44% (33,949) were determined to be non-service connected, 51% (39,392) were adjudicated to receive less than a 50% benefit, and 6% (4,324) receive a benefit of 50% or more. About half of Registry cases are identified by multiple methods.

A total of 727,731 Veterans have taken the VA TBI screen and 25% have qualified for the VA TBI Veterans Health Registry. Compared to those taking the screen who did not qualify for the VA TBI Veterans Health Registry, those included in the Registry were more likely to be male, younger, white or Hispanic, in the Marines or Army, active duty, and enlisted.

Those with four positive responses to the TBI Screen are offered a comprehensive clinical evaluation to diagnose their symptoms and to develop a plan of care. To date, 108,942 Veterans have a complete VA TBI Screen and Clinical Evaluation File (CEF). Of those, the CEF has confirmed TBI in 61% of the cases, ruled out TBI in 35%, and been inconclusive in 5%. Of those with a CEF confirming TBI, 77% report blast injuries, 52% report loss of consciousness, and 40% report posttraumatic amnesia. Based on these indicators, 81% are classified as having mild TBI, 9% moderate TBI, and 6% severe TBI.

## TBI VETERANS HEALTH REGISTRY REPORT

Background of the TBI Veterans Health Registry: Considered for inclusion in the registry are Veterans who

- Served as a member of the Armed Forces in Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), or Operation New Dawn (OND) since the beginning of OEF on October 7, 2001; and,
- Exhibit symptoms associated with TBI, as determined by the Secretary of the VA; and
- Apply for care and services furnished by the VA under chapter 17 of title 38, United States Code; or,
- File a claim for compensation under chapter 11 of such title on the basis of any disability which may be associated with TBI as a result of such service.

Veterans fitting this definition are considered registry cases, which include cases identified through the VA TBI Screen, disability claims data processed by the Veterans Benefits Administration, or electronic medical record review. Cases designated as TBI within the VA TBI Registry must have at least one of the following: (1a.) a complete VA TBI Screen, in which the Veteran reports a history of TBI diagnosis during OEF/OIF/OND deployment or (1b.) a complete VA TBI Screen in which the Veteran responds positively to all four VA TBI Screen questions; (2) a VBA disability claim that includes a claim code for TBI; and/or (3) an electronic medical record that includes an ICD-9-CM diagnosis code of TBI (as defined by VA TBI Case finding procedures).

Table 1. Case Composition of the VA TBI Health Registry, October 2001-September 2013<sup>1</sup>

	Method of Determination			
	Total Unique Registry Cases (May Meet Multiple Inclusion Criteria)	Registry Cases Identified by VA TBI Screen <sup>2</sup>	VBA Disability Claim File with a TBI Claim Code <sup>3</sup>	VA Medical Record with an ICD-9-CM VA/DOD Case Finding Code of TBI <sup>4</sup>
VA TBI Registry Cases	221,895	185,437	77,665	114,322

<sup>1</sup>Results of VA TBI Screens and VBA disability claims available since April 2007 and January 2007, respectively.

<sup>2</sup>Includes Veterans with a complete VA TBI Screen, in which the Veteran reports that they have already been diagnosed as having TBI during OEF/OIF/OND deployment or in which the person responds positively to all four VA TBI Screen questions.

<sup>3</sup>Includes individuals with a VBA disability claim that includes a claim code for TBI (8045).

<sup>4</sup>A medical record that includes at least one ICD-9-CM code of TBI; including 800 – 801.99 (skull fractures, vault and base), 803 – 804.99 (other skull fractures), 850 – 854.19 (concussion/intracranial injury), 950.1 – 950.3 (optic nerve injuries), 959.01 (unspecified head injury), 310.2 (post-concussion syndrome), 905.0 (late effects of fracture of skull and face bones), and 907.0 (late effects of intracranial injury without mention of skull fracture). ICD-9 codes 959.9 (brain injury traumatic NEC) and V15.52 (personal history of TBI) are also included after 10/1/2009.

Table 2. Veterans Completing VA TBI Screen and Screen Results, April 2007- September 2013

	Total Veterans with a Complete VA TBI Screen	Registry Cases Identified by VA TBI Screen <sup>1</sup>	Report of a Prior Diagnosis of TBI during OEF/OIF/OND Deployment on VA TBI Screen <sup>2</sup>	Four Positive Responses to VA TBI Screen <sup>2</sup>
Number of Individuals with a VA TBI Screen	727,731	185,437	41,524	143,913

<sup>1</sup>Includes Veterans with a report of previous TBI during OEF/OIF/OND or four positive responses to VA TBI Screen

<sup>2</sup>Veterans with multiple VA TBI Screens are categorized by their first identification of TBI

# TBI VETERANS HEALTH REGISTRY REPORT

## Case Composition of the VA TBI Registry by Method(s) of Entry, October 2001- September 2013

Total N =221,895

### LEGEND

**A:** Cases identified only by the VA TBI screen  
(n =73,691; 33.2%)

**B:** Cases identified only by TBI ICD-9-CM Code within Electronic Medical Record (EMR)  
(n = 12,505; 5.6%)

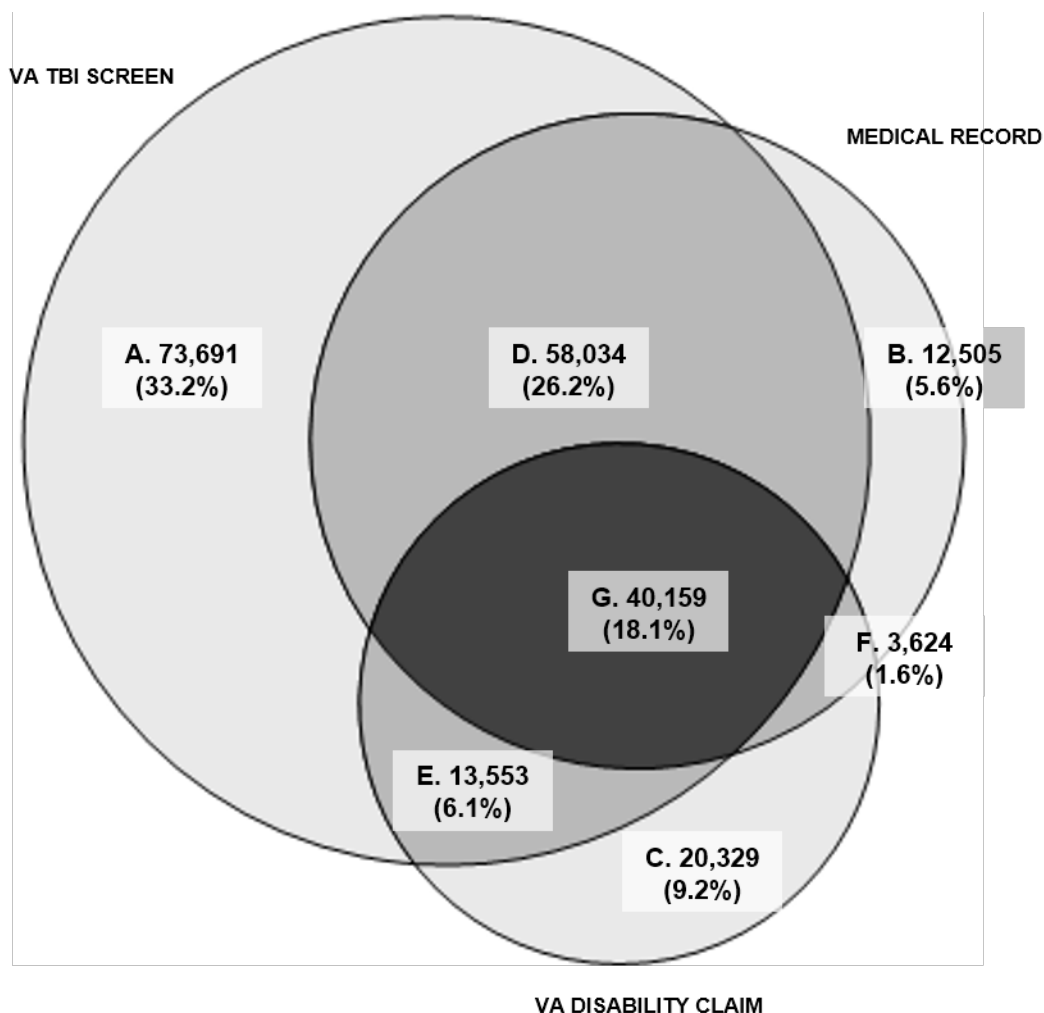
**C:** Cases identified only by inclusion of a TBI code in VBA disability claim  
(n = 20,329; 9.2%)

**D:** Case Identified by the VA TBI screen and ICD-9-CM code in the EMR  
(n =58,034; 26.2%)

**E:** Case Identified by the VA TBI screen and a TBI code in a VBA disability claim  
(n = 13,553; 6.1%)

**F:** Case Identified by a TBI ICD-9-CM Code within the EMR and inclusion of a TBI code in a VBA disability claim (n = 3,624; 1.6%)

**G:** Case Identified by the VA TBI screen, a TBI ICD-9-CM Code within EMR and inclusion of a TBI code in a VBA disability claim  
(n = 40,159; 18.1%)



# TBI VETERANS HEALTH REGISTRY REPORT

Table 3. Demographic & Military Characteristic Comparisons of Veterans completing the VA TBI Screen, April 2007- September 2013

		Total Number of Veterans Who Have Completed the VA TBI Screen	
		Total Sample <sup>1</sup>	
Total Cases		727,731	100.0%
Gender	Female	87,661	12.1%
	Male	640,006	87.9%
	Unknown	64	0.0%
Age	<25	146,200	20.1%
	26-30	262,330	36.0%
	31-40	165,161	22.7%
	>40	153,906	21.1%
	Unknown	134	0.0%
Race/Ethnicity	White	431,107	59.2%
	Black	98,271	13.5%
	Hispanic	79,057	10.9%
	Other	37,009	5.1%
	Unknown	82,287	11.3%
Service Branch	Army	459,276	63.1%
	Coast Guard	829	0.1%
	Air Force	71,026	9.8%
	Marines	107,101	14.7%
	Navy	89,499	12.3%
Component	Active	414,836	57.0%
	Reserve/Guard	312,895	43.0%
Rank	Enlisted	677,409	93.1%
	Officer <sup>2</sup>	50,322	6.9%

<sup>1</sup>Percentages are column percentages

<sup>2</sup>Includes Commissioned and Warrant Officers

# TBI VETERANS HEALTH REGISTRY REPORT

Table 4. Demographic & Military Characteristic Comparisons of Veterans completing the VA TBI Screen by Result, April 2007-September 2013

		I. Veterans Excluded by Results of VA TBI Screen		II. VA TBI Registry Cases - Identified by VA TBI Screen <sup>1</sup>		III. VA TBI Registry Cases - Self Report Previous TBI Diagnosis		IV. VA TBI Registry Cases – Four positive Responses to TBI Screen	
		Subset of Table 3 <sup>2</sup>		Subset of Table 3 <sup>2</sup>		Subset of Column II <sup>3</sup>		Subset of Column II <sup>3</sup>	
Total Cases		542,294	74.5%	185,437	25.5%	41,524	22.4%	143,913	77.6%
Gender	Female	76,065	86.8%	11,596	13.2%	2,593	22.4%	9,003	77.6%
	Male	466,193	72.8%	173,813	27.2%	38,922	22.4%	134,891	77.6%
	Unknown	36	56.3%	28	43.8%	9	32.1%	19	67.9%
Age	<25	105,552	72.2%	40,648	27.8%	9,545	23.5%	31,103	76.5%
	26-30	189,329	72.2%	73,001	27.8%	15,717	21.5%	57,284	78.5%
	31-40	122,787	74.3%	42,374	25.7%	9,742	23.0%	32,632	77.0%
	>40	124,539	80.9%	29,367	19.1%	6,505	22.2%	22,862	77.8%
	Unknown	87	64.9%	47	35.1%	15	31.9%	32	68.1%
Race/Ethnicity	White	318,843	74.0%	112,264	26.0%	26,662	23.7%	85,602	76.3%
	Black	77,360	78.7%	20,911	21.3%	3,941	18.8%	16,970	81.2%
	Hispanic	58,013	73.4%	21,044	26.6%	4,344	20.6%	16,700	79.4%
	Other	29,903	80.8%	7,106	19.2%	1,475	20.8%	5,631	79.2%
	Unknown	58,175	70.7%	24,112	29.3%	5,102	21.2%	19,010	78.8%
Service Branch	Army	325,833	70.9%	133,443	29.1%	30,665	23.0%	102,778	77.0%
	Coast Guard	738	89.0%	91	11.0%	24	26.4%	67	73.6%
	Air Force	64,132	90.3%	6,894	9.7%	1,431	20.8%	5,463	79.2%
	Marines	73,289	68.4%	33,812	31.6%	7,371	21.8%	26,441	78.2%
	Navy	78,302	87.5%	11,197	12.5%	2,033	18.2%	9,164	81.8%
Component	Active	296,054	71.4%	118,782	28.6%	28,268	23.8%	90,514	76.2%
	Reserve/Guard	246,240	78.7%	66,655	21.3%	13,256	19.9%	53,399	80.1%
Rank	Enlisted	498,516	73.6%	178,893	26.4%	39,764	22.2%	139,129	77.8%
	Officer <sup>4</sup>	43,778	87.0%	6,544	13.0%	1,760	26.9%	4,784	73.1%

<sup>1</sup>For Veterans with multiple VA TBI Screens, the first screen resulting in inclusion as a VA TBI Health Registry case is used

<sup>2</sup>Percentages are row percentages of Table 3

<sup>3</sup>Percentages are row percentages of Column II

<sup>4</sup>Includes Commissioned and Warrant Officers



# TBI VETERANS HEALTH REGISTRY REPORT

Table 5. Summary of Subsequent Clinical Evaluation Results for VA TBI Screen Positive Cases, April 2007- September 2013

	Total Veterans with a Complete Screen & CEF <sup>1</sup>	Clinical Confirmation of OEF/OIF/OND Deployment Related TBI	Clinical Evaluation Ruled Out TBI (Signs and Symptoms Not Indicative of TBI)	Clinical Evaluation Results 'Unknown' (No Designation of Signs and Symptoms)
VA TBI Health Registry Cases Identified by the VA TBI Screen With A Follow-Up TBI Clinical Evaluation Form (CEF)	108,942	65,930 (60.5%)	37,764 (34.7%)	5,248 (4.8%)

<sup>1</sup>Additional TBI-related clinical evaluation is offered to all Veterans who screen positive; however, not all people who screen positive undertake evaluation.

Table 6. Detailed Summary of Clinical Evaluation Results for Veterans Identified as having a TBI by the VA TBI Screen and a Confirmed TBI diagnosis by the VA Clinical Evaluation (N =62,713), April 2007- September 2013

Number of Specific Injury Events Reported <sup>1</sup>									
Etiology of Injury	None		One		Two or More		Missing		
Bullet Injuries	63,458	96.3%	1,422	2.2%	967	1.5%	83	0.1%	
Fall Injuries	48,603	73.7%	10,998	16.6%	5,880	8.9%	489	0.8%	
Blast Injuries	13,403	20.3%	18,714	28.4%	32,088	48.7%	1,725	2.6%	
Vehicular Injuries	49,798	75.5%	10,008	15.2%	5,701	8.6%	423	0.6%	
Number of Etiologies Reported									
	None		One		Two or More		Missing		
Number of Injury Etiologies Reported	2,886	4.4%	37,357	56.7%	25,687	38.9%	0	0.0%	
Disrupted Brain Function Reported									
Type of Disrupted Brain Function	None		One		Two or More		Uncertain <sup>2</sup>		Missing
Loss of Consciousness	25,522	38.6%	26,713	40.6%	7,832	11.9%	5,023	8.0%	565 0.9%
Alteration of Consciousness	4,440	6.8%	34,526	52.1%	22,237	35.5%	2,502	4.0%	1,090 1.7%
Posttraumatic Amnesia	31,293	47.0%	19,811	30.2%	6,484	10.3%	6,732	10.7%	1,080 1.7%
Severity of TBI									
Most Severe Brain Injury Reported <sup>3</sup>	Mild		Moderate		Severe		Missing		
Severity	53,475	81.1%	5,618	8.5%	3,902	5.9%	2,935	4.5%	

<sup>1</sup>Percentages presented are row percentages; categories in a row are mutually exclusive and sum to 100%

<sup>2</sup>'Uncertain' is a specific response category to questions regarding disrupted brain function, and indicates the possibility of the occurrence of these events. It does not indicate that the Veteran failed to respond to the question.

<sup>3</sup>Traumatic brain injury severity ratings are based on duration of loss of consciousness, alteration of conscious, and/or posttraumatic amnesia at the time of injury. The Clinical Evaluation relies on patient self-report obtained months to years from the date of injury, which may impact the accuracy of severity determination.

## TBI VETERANS HEALTH REGISTRY REPORT

An examination of cases identified using Veterans Benefits Administration (VBA) claim codes of TBI are provided in tables 7. The data examined for these comparisons included all cases with a VBA TBI claim code (n=77,665). This table indicates the Maximum TBI Disability Adjudication.

Table 7. Demographic and Military Characteristic Comparisons of Veterans with Claim Codes for TBI Identified in VBA Disability Claims, January 2007- September 2013

	Highest TBI Disability Adjudication <sup>1,2,3</sup>													
			0%		10%-20%		30%-40%		50%-60%		70%-90%		100%	
	Not Service Connected		Denied		Mild Disability		Definite Disability		Considerable Disability		Severe Disability		Total Disability	
Total	33,949	43.7%	9,396	12.1%	20,172	26.0%	9,824	12.6%	94	0.1%	3,619	4.7%	611	0.8%
Gender														
Female	2,197	53.1%	509	12.3%	874	21.1%	373	9.0%	8	0.2%	148	3.6%	30	0.7%
Male	31,745	43.2%	8,884	12.1%	19,294	26.2%	9,446	12.9%	86	0.1%	3,469	4.7%	581	0.8%
Unknown	7	33.3%	3	14.3%	4	19.0%	5	23.8%	0	0.0%	2	9.5%	0	0.0%
Age														
<25	8,562	53.7%	1,521	9.5%	3,570	22.4%	1,634	10.3%	15	0.1%	555	3.5%	74	0.5%
26-30	4,233	19.7%	3,671	17.1%	8,165	38.1%	3,823	17.8%	36	0.2%	1,313	6.1%	204	1.0%
31-40	5,413	33.5%	2,329	14.4%	4,759	29.5%	2,431	15.1%	22	0.1%	997	6.2%	189	1.2%
>40	1,283	13.3%	1,867	19.3%	3,667	38.0%	1,928	20.0%	21	0.2%	752	7.8%	144	1.5%
Unknown	14,458	99.8%	8	0.1%	11	0.1%	8	0.1%	0	0.0%	2	0.0%	0	0.0%
Race/Ethnicity														
White	20,857	42.5%	6,133	12.5%	13,147	26.8%	6,254	12.7%	60	0.1%	2,268	4.6%	347	0.7%
Black	3,665	50.3%	801	11.0%	1,592	21.9%	837	11.5%	9	0.1%	324	4.4%	58	0.8%
Hispanic	3,477	41.9%	981	11.8%	2,178	26.3%	1,108	13.4%	16	0.2%	448	5.4%	87	1.0%
Other	1,279	44.0%	342	11.8%	737	25.3%	371	12.8%	4	0.1%	145	5.0%	31	1.1%
Unknown	4,671	46.2%	1,139	11.3%	2,518	24.9%	1,254	12.4%	5	0.0%	434	4.3%	88	0.9%
Service Branch														
Army	23,521	43.9%	6,440	12.0%	13,955	26.1%	6,670	12.5%	64	0.1%	2,441	4.6%	433	0.8%
Coast Guard	16	42.1%	3	7.9%	12	31.6%	5	13.2%	0	0.0%	2	5.3%	0	0.0%
Air Force	2,010	55.6%	488	13.5%	684	18.9%	296	8.2%	7	0.2%	105	2.9%	27	0.7%
Marines	6,073	38.6%	1,841	11.7%	4,394	27.9%	2,389	15.2%	19	0.1%	910	5.8%	114	0.7%
Navy	2,329	49.1%	624	13.1%	1,127	23.7%	464	9.8%	4	0.1%	161	3.4%	37	0.8%
Component														
Active	22,785	41.5%	7,216	13.2%	14,531	26.5%	7,187	13.1%	66	0.1%	2,667	4.9%	410	0.7%
Reserve/Guard	11,164	49.0%	2,180	9.6%	5,641	24.7%	2,637	11.6%	28	0.1%	952	4.2%	201	0.9%
Rank														
Enlisted	31,964	43.5%	8,802	12.0%	19,156	26.1%	9,360	12.8%	91	0.1%	3,452	4.7%	578	0.8%
Officer <sup>4</sup>	1,985	46.6%	594	13.9%	1,016	23.8%	464	10.9%	3	0.1%	167	3.9%	33	0.8%

<sup>1</sup>If multiple adjudications occur, the adjudication with the highest percentage of TBI disability is reported

<sup>2</sup>Adjudication percentages fall between 0 and 100 and are only assigned in multiples of 10

<sup>3</sup>Percentages presented are row percentages

<sup>4</sup>Includes Commissioned and Warrant Officers

## TBI VETERANS HEALTH REGISTRY REPORT

Table 8. VA TBI Health Registry Cases Identified by Electronic Medical Record Review by Veterans Integrated Service Network (VISN), October 2001- September 2013

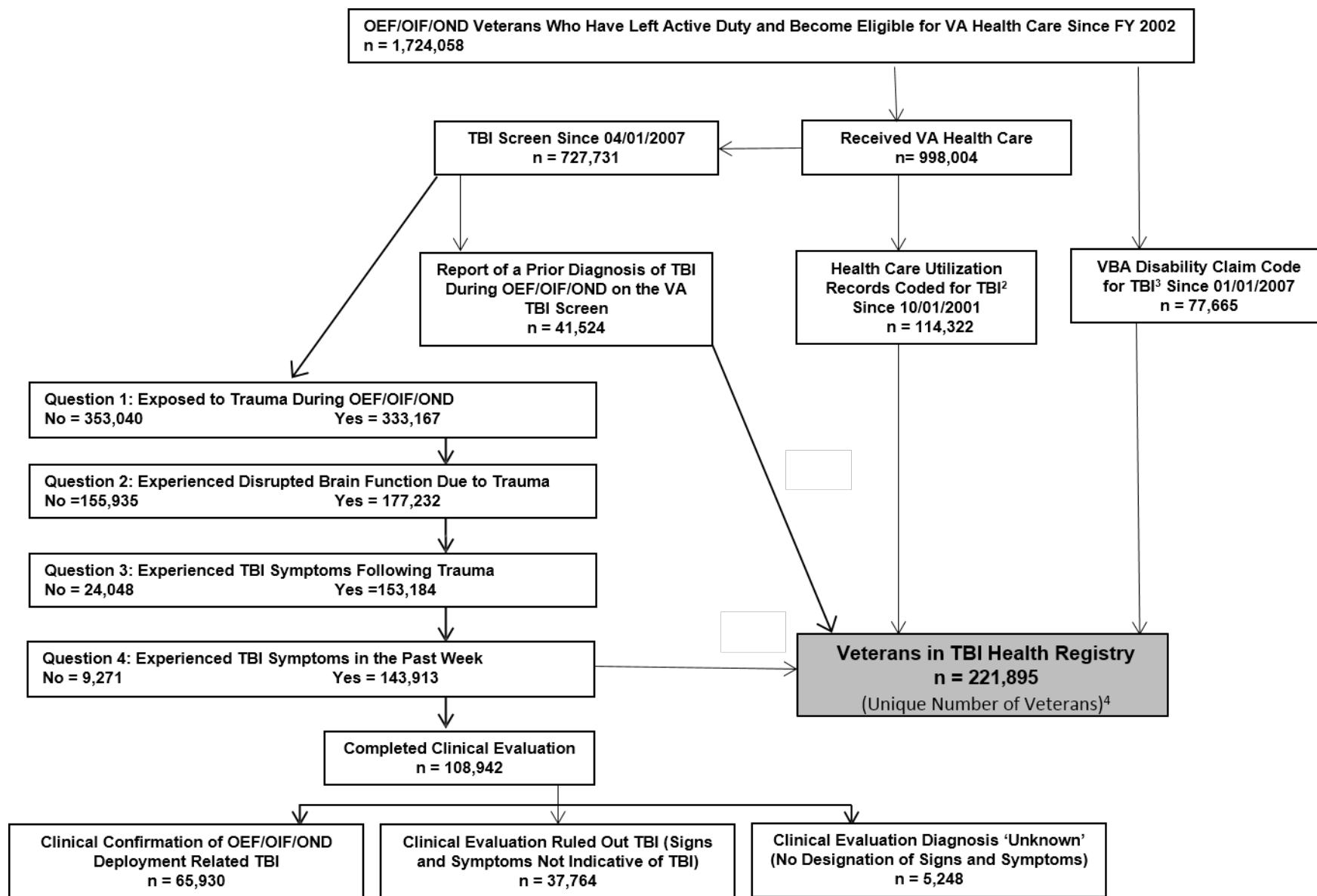
	Number of Veterans <sup>1</sup>				Number of Visits <sup>1</sup>			
	Any Diagnosis of TBI <sup>2</sup> Inpatient Visits		Any Diagnosis of TBI <sup>2</sup> Outpatient Visits		Any Diagnosis of TBI <sup>2</sup> Inpatient Visits		Any Diagnosis of TBI <sup>2</sup> Outpatient Visits	
Total Veterans/Visits per VISN	7,610	100.0%	112,963	100.0%	11,208	100.0%	600,019	100.0%
VISN 1. VA New England Healthcare System	459	6.0%	4,751	4.2%	806	7.2%	27,940	4.7%
VISN 2. VA Healthcare Network Upstate New York	124	1.6%	2,300	2.0%	187	1.7%	9,861	1.6%
VISN 3. VA New York/New Jersey Healthcare System	157	2.1%	2,812	2.5%	240	2.1%	15,444	2.6%
VISN 4. VA Stars & Stripes Healthcare System	260	3.4%	5,400	4.8%	368	3.3%	30,101	5.0%
VISN 5. VA Capitol Health Care System	82	1.1%	2,085	1.8%	151	1.3%	17,914	3.0%
VISN 6. VA Mid-Atlantic Healthcare System	745	9.8%	6,415	5.7%	1,022	9.1%	33,064	5.5%
VISN 7. VA Southeast Network	405	5.3%	6,290	5.6%	584	5.2%	33,894	5.6%
VISN 8. VA Sunshine Healthcare Network	890	11.7%	8,311	7.4%	1,293	11.5%	53,104	8.9%
VISN 9. VA Mid-South Healthcare Network	290	3.8%	5,756	5.1%	389	3.5%	37,079	6.2%
VISN 10. VA Healthcare System of Ohio	243	3.2%	4,015	3.6%	388	3.5%	26,471	4.4%
VISN 11. Veterans in Partnership Healthcare Network	189	2.5%	3,739	3.3%	276	2.5%	16,236	2.7%
VISN 12. VA Great Lakes Health Care System	366	4.8%	4,927	4.4%	594	5.3%	23,600	3.9%
VISN 15. VA Heartland Network	261	3.4%	4,025	3.6%	373	3.3%	24,685	4.1%
VISN 16. South Central VA Health Care Network	548	7.2%	9,649	8.5%	757	6.8%	36,350	6.1%
VISN 17. VA Heart of Texas Health Care Network	261	3.4%	6,847	6.1%	387	3.5%	25,666	4.3%
VISN 18. VA Southwest Healthcare Network	259	3.4%	5,756	5.1%	385	3.4%	27,171	4.5%
VISN 19. VA Rocky Mountain Network	321	4.2%	4,870	4.3%	493	4.4%	26,998	4.5%
VISN 20. VA Northwest Network	431	5.7%	5,732	5.1%	647	5.8%	25,031	4.2%
VISN 21. VA Sierra Pacific Network	508	6.7%	4,794	4.2%	694	6.2%	22,636	3.8%
VISN 22. VA Desert Pacific Healthcare Network	358	4.7%	9,157	8.1%	538	4.8%	52,582	8.8%
VISN 23. VA Midwest Health Care Network	453	6.0%	5,332	4.7%	636	5.7%	34,192	5.7%

<sup>1</sup>Percentages presented are column percentages

<sup>2</sup>The diagnosis of TBI was determined by review of all ICD-9-CM codes included within the record for each visit, as non-TBI diagnosis codes were frequently listed as the primary or principal diagnosis.

# TBI VETERANS HEALTH REGISTRY REPORT

APPENDIX: Flowchart of OEF/OIF/OND Veterans Entering the Veterans TBI Health Registry<sup>1</sup>, October 2001- September 2013



## TBI VETERANS HEALTH REGISTRY REPORT

### Footnotes for Flowchart on Previous Page (8)

<sup>1</sup>Cumulative from 10/7/2001 - 9/30/2013.

<sup>2</sup>ICD-9-CM codes included 800 – 801.99 (skull fractures, vault and base), 803 – 804.99 (other skull fractures), 850 – 854.19 (concussion/intracranial injury), 950.1 – 950.3 (optic nerve injuries), 959.01 (unspecified head injury), 310.2 (post-concussion syndrome), 905.0 (late effects of fracture of skull and face bones), and 907.0 (late effects of intracranial injury without mention of skull fracture). ICD-9-CM codes 959.9 (brain injury traumatic NEC) and V15.52 (personal history of TBI) are also included after 10/1/2009.

<sup>3</sup>VBA diagnostic claim code 8045.

<sup>4</sup>As Veterans were able to enter the TBI Health Registry from numerous pathways, this total indicates the number of unique Veterans entering from any entry pathway or combination of pathways.



Per Curiam

**SUPREME COURT OF THE UNITED STATES**

**GEORGE PORTER, JR. v. BILL MCCOLLUM,  
ATTORNEY GENERAL OF FLORIDA, ET AL.**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08–10537. Decided November 30, 2009

PER CURIAM.

Petitioner George Porter is a veteran who was both wounded and decorated for his active participation in two major engagements during the Korean War; his combat service unfortunately left him a traumatized, changed man. His commanding officer’s moving description of those two battles was only a fraction of the mitigating evidence that his counsel failed to discover or present during the penalty phase of his trial in 1988.

In this federal postconviction proceeding, the District Court held that Porter’s lawyer’s failure to adduce that evidence violated his Sixth Amendment right to counsel and granted his application for a writ of habeas corpus. The Court of Appeals for the Eleventh Circuit reversed, on the ground that the Florida Supreme Court’s determination that Porter was not prejudiced by any deficient performance by his counsel was a reasonable application of *Strickland v. Washington*, 466 U. S. 668 (1984). Like the District Court, we are persuaded that it was objectively unreasonable to conclude there was no reasonable probability the sentence would have been different if the sentencing judge and jury had heard the significant mitigation evidence that Porter’s counsel neither uncovered nor presented. We therefore grant the petition for certiorari in part and reverse the judgment of the Court of Appeals.<sup>1</sup>

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<sup>1</sup> We deny the petition insofar as it challenges his conviction.

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I

Porter was convicted of two counts of first-degree murder for the shooting of his former girlfriend, Evelyn Williams, and her boyfriend Walter Burrows. He was sentenced to death on the first count but not the second.

In July 1986, as his relationship with Williams was ending, Porter threatened to kill her and then left town. When he returned to Florida three months later, he attempted to see Williams but her mother told him that Williams did not want to see him. He drove past Williams' house each of the two days prior to the shooting, and the night before the murder he visited Williams, who called the police. Porter then went to two cocktail lounges and spent the night with a friend, who testified Porter was quite drunk by 11 p.m. Early the next morning, Porter shot Williams in her house. Burrows struggled with Porter and forced him outside where Porter shot him.

Porter represented himself, with standby counsel, for most of the pretrial proceedings and during the beginning of his trial. Near the completion of the State's case in chief, Porter pleaded guilty. He thereafter changed his mind about representing himself, and his standby counsel was appointed as his counsel for the penalty phase. During the penalty phase, the State attempted to prove four aggravating factors: Porter had been "previously convicted" of another violent felony (*i.e.*, in Williams' case, killing Burrows, and in his case, killing Williams);<sup>2</sup> the murder was committed during a burglary; the murder was committed in a cold, calculated, and premeditated man-

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<sup>2</sup>It is an aggravating factor under Florida law that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person." Fla. Stat. §921.141(5)(b) (1987). In Porter's case, the State established that factor by reference to Porter's contemporaneous convictions stemming from the same episode: two counts of murder and one count of aggravated assault. Tr. 5 (Mar. 4, 1988).



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ner; and the murder was especially heinous, atrocious, or cruel. The defense put on only one witness, Porter's ex-wife, and read an excerpt from a deposition. The sum total of the mitigating evidence was inconsistent testimony about Porter's behavior when intoxicated and testimony that Porter had a good relationship with his son. Although his lawyer told the jury that Porter "has other handicaps that weren't apparent during the trial" and Porter was not "mentally healthy," he did not put on any evidence related to Porter's mental health. 3 Tr. 477–478 (Jan. 22, 1988).

The jury recommended the death sentence for both murders. The trial court found that the State had proved all four aggravating circumstances for the murder of Williams but that only the first two were established with respect to Burrows' murder. The trial court found no mitigating circumstances and imposed a death sentence for Williams' murder only. On direct appeal, the Florida Supreme Court affirmed the sentence over the dissent of two justices, but struck the heinous, atrocious, or cruel aggravating factor. *Porter v. State*, 564 So. 2d 1060 (1990) (*per curiam*). The court found the State had not carried its burden on that factor because the "record is consistent with the hypothesis that Porter's was a crime of passion, not a crime that was meant to be deliberately and extraordinarily painful." *Id.*, at 1063 (emphasis deleted). The two dissenting justices would have reversed the penalty because the evidence of drunkenness, "combined with evidence of Porter's emotionally charged, desperate, frustrated desire to meet with his former lover, is sufficient to render the death penalty disproportional punishment in this instance." *Id.*, at 1065–1066 (Barkett, J., concurring in part and dissenting in part).

In 1995, Porter filed a petition for postconviction relief in state court, claiming his penalty-phase counsel failed to investigate and present mitigating evidence. The court

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conducted a 2-day evidentiary hearing, during which Porter presented extensive mitigating evidence, all of which was apparently unknown to his penalty-phase counsel. Unlike the evidence presented during Porter's penalty hearing, which left the jury knowing hardly anything about him other than the facts of his crimes, the new evidence described his abusive childhood, his heroic military service and the trauma he suffered because of it, his long-term substance abuse, and his impaired mental health and mental capacity.

The depositions of his brother and sister described the abuse Porter suffered as a child. Porter routinely witnessed his father beat his mother, one time so severely that she had to go to the hospital and lost a child. Porter's father was violent every weekend, and by his siblings' account, Porter was his father's favorite target, particularly when Porter tried to protect his mother. On one occasion, Porter's father shot at him for coming home late, but missed and just beat Porter instead. According to his brother, Porter attended classes for slow learners and left school when he was 12 or 13.

To escape his horrible family life, Porter enlisted in the Army at age 17 and fought in the Korean War. His company commander, Lieutenant Colonel Sherman Pratt, testified at Porter's postconviction hearing. Porter was with the 2d Division, which had advanced above the 38th parallel to Kunu-ri when it was attacked by Chinese forces. Porter suffered a gunshot wound to the leg during the advance but was with the unit for the battle at Kunu-ri. While the Eighth Army was withdrawing, the 2d Division was ordered to hold off the Chinese advance, enabling the bulk of the Eighth Army to live to fight another day. As Colonel Pratt described it, the unit "went into position there in bitter cold night, terribly worn out, terribly weary, almost like zombies because we had been in constant—for five days we had been in constant contact with

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the enemy fighting our way to the rear, little or no sleep, little or no food, literally as I say zombies.” 1 Tr. 138 (Jan. 4, 1996). The next morning, the unit engaged in a “fierce hand-to-hand fight with the Chinese” and later that day received permission to withdraw, making Porter’s regiment the last unit of the Eighth Army to withdraw. *Id.*, at 139–140.

Less than three months later, Porter fought in a second battle, at Chip’yong-ni. His regiment was cut off from the rest of the Eighth Army and defended itself for two days and two nights under constant fire. After the enemy broke through the perimeter and overtook defensive positions on high ground, Porter’s company was charged with retaking those positions. In the charge up the hill, the soldiers “were under direct open fire of the enemy forces on top of the hill. They immediately came under mortar, artillery, machine gun, and every other kind of fire you can imagine and they were just dropping like flies as they went along.” *Id.*, at 150. Porter’s company lost all three of its platoon sergeants, and almost all of the officers were wounded. Porter was again wounded and his company sustained the heaviest losses of any troops in the battle, with more than 50% casualties. Colonel Pratt testified that these battles were “very trying, horrifying experiences,” particularly for Porter’s company at Chip’yong-ni. *Id.*, at 152. Porter’s unit was awarded the Presidential Unit Citation for the engagement at Chip’yong-ni, and Porter individually received two Purple Hearts and the Combat Infantryman Badge, along with other decorations.

Colonel Pratt testified that Porter went absent without leave (AWOL) for two periods while in Korea. He explained that this was not uncommon, as soldiers sometimes became disoriented and separated from the unit, and that the commander had decided not to impose any punishment for the absences. In Colonel Pratt’s experience, an “awful lot of [veterans] come back nervous

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wrecks. Our [veterans'] hospitals today are filled with people mentally trying to survive the perils and hardships [of] . . . the Korean War," particularly those who fought in the battles he described. *Id.*, at 153.

When Porter returned to the United States, he went AWOL for an extended period of time.<sup>3</sup> He was sentenced to six months' imprisonment for that infraction, but he received an honorable discharge. After his discharge, he suffered dreadful nightmares and would attempt to climb his bedroom walls with knives at night.<sup>4</sup> Porter's family eventually removed all of the knives from the house. According to Porter's brother, Porter developed a serious drinking problem and began drinking so heavily that he would get into fights and not remember them at all.

In addition to this testimony regarding his life history, Porter presented an expert in neuropsychology, Dr. Dee, who had examined Porter and administered a number of psychological assessments. Dr. Dee concluded that Porter suffered from brain damage that could manifest in impulsive, violent behavior. At the time of the crime, Dr. Dee testified, Porter was substantially impaired in his ability to conform his conduct to the law and suffered from an extreme mental or emotional disturbance, two statutory mitigating circumstances, Fla. Stat. §921.141(6). Dr. Dee also testified that Porter had substantial difficulties with

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<sup>3</sup>Porter explained to one of the doctors who examined him for competency to stand trial that he went AWOL in order to spend time with his son. Record 904.

<sup>4</sup>Porter's expert testified that these symptoms would "easily" warrant a diagnosis of posttraumatic stress disorder (PTSD). 2 Tr. 233 (Jan. 5, 1996). PTSD is not uncommon among veterans returning from combat. See Hearing on Fiscal Year 2010 Budget for Veterans' Programs before the Senate Committee on Veterans' Affairs, 111th Cong., 1st Sess., 63 (2009) (uncorrected copy) (testimony of Eric K. Shinseki, Secretary of Veterans Affairs (VA), reporting that approximately 23 percent of the Iraq and Afghanistan war veterans seeking treatment at a VA medical facility had been preliminarily diagnosed with PTSD).

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reading, writing, and memory, and that these cognitive defects were present when he was evaluated for competency to stand trial. 2 Tr. 227–228 (Jan. 5, 1996); see also Record 904–906. Although the State’s experts reached different conclusions regarding the statutory mitigators,<sup>5</sup> each expert testified that he could not diagnose Porter or rule out a brain abnormality. 2 Tr. 345, 382 (Jan. 5, 1996); 3 *id.*, at 405.

The trial judge who conducted the state postconviction hearing, without determining counsel’s deficiency, held that Porter had not been prejudiced by the failure to introduce any of that evidence. Record 1203, 1206. He found that Porter had failed to establish any statutory mitigating circumstances, *id.*, at 1207, and that the non-statutory mitigating evidence would not have made a difference in the outcome of the case, *id.*, at 1210. He discounted the evidence of Porter’s alcohol abuse because it was inconsistent and discounted the evidence of Porter’s abusive childhood because he was 54 years old at the time of the trial. He also concluded that Porter’s periods of being AWOL would have reduced the impact of Porter’s military service to “inconsequential proportions.” *Id.*, at 1212. Finally, he held that even considering all three categories of evidence together, the “trial judge and jury still would have imposed death.” *Id.*, at 1214.

The Florida Supreme Court affirmed. It first accepted the trial court’s finding that Porter could not have established any statutory mitigating circumstances, based on the trial court’s acceptance of the State’s experts’ conclusions in that regard. *Porter v. State*, 788 So. 2d 917, 923 (2001) (*per curiam*). It then held the trial court was cor-

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<sup>5</sup>The State presented two experts, Dr. Riebsame and Dr. Kirkland. Neither of the State’s experts had examined Porter, but each testified that based upon their review of the record, Porter met neither statutory mitigating circumstance.

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rect to find “the additional nonstatutory mitigation to be lacking in weight because of the specific facts presented.” *Id.*, at 925. Like the postconviction court, the Florida Supreme Court reserved judgment regarding counsel’s deficiency. *Ibid.*<sup>6</sup> Two justices dissented, reasoning that counsel’s failure to investigate and present mitigating evidence was “especially harmful” because of the divided vote affirming the sentence on direct appeal—“even without the substantial mitigation that we now know existed”—and because of the reversal of the heinous, atrocious, and cruel aggravating factor. *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part).

Porter thereafter filed his federal habeas petition. The District Court held Porter’s penalty-phase counsel had been ineffective. It first determined that counsel’s performance had been deficient because “penalty-phase counsel did little, if any investigation . . . and failed to effectively advocate on behalf of his client before the jury.” *Porter v. Crosby*, No. 6:03-cv-1465-Orl-31KRS, 2007 WL 1747316, \*23 (MD Fla., June 18, 2007). It then determined that counsel’s deficient performance was prejudicial, finding that the state court’s decision was contrary to clearly established law in part because the state court failed to consider the entirety of the evidence when re-

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<sup>6</sup>The postconviction court stated defense counsel “was not ineffective for failing to pursue mental health evaluations and . . . [Porter] has thus failed to show sufficient evidence that any statutory mitigators could have been presented.” Record 1210. It is not at all clear whether this stray comment addressed counsel’s deficiency. If it did, then it was at most dicta, because the court expressly “decline[d] to make a determination regarding whether or not Defense Counsel was in fact deficient here.” *Id.*, at 1206. The Florida Supreme Court simply paraphrased the postconviction court when it stated “trial counsel’s decision not to pursue mental evaluations did not exceed the bounds for competent counsel.” *Porter v. State*, 788 So. 2d 917, 923–924 (2001) (*per curiam*). But that court also expressly declined to answer the question of deficiency. *Id.*, at 925.

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weighing the evidence in mitigation, including the trial evidence suggesting that “this was a crime of passion, that [Porter] was drinking heavily just hours before the murders, or that [Porter] had a good relationship with his son.” *Id.*, at \*30.

The Eleventh Circuit reversed. It held the District Court had failed to appropriately defer to the state court’s factual findings with respect to Porter’s alcohol abuse and his mental health. 552 F. 3d 1260, 1274, 1275 (2008) (*per curiam*). The Court of Appeals then separately considered each category of mitigating evidence and held it was not unreasonable for the state court to discount each category as it did. *Id.*, at 1274. Porter petitioned for a writ of certiorari. We grant the petition and reverse with respect to the Court of Appeals’ disposition of Porter’s ineffective-assistance claim.

## II

To prevail under *Strickland*, Porter must show that his counsel’s deficient performance prejudiced him. To establish deficiency, Porter must show his “counsel’s representation fell below an objective standard of reasonableness.” 466 U. S., at 688. To establish prejudice, he “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, at 694. Finally, Porter is entitled to relief only if the state court’s rejection of his claim of ineffective assistance of counsel was “contrary to, or involved an unreasonable application of” *Strickland*, or it rested “on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U. S. C. §2254(d).

Because the state court did not decide whether Porter’s counsel was deficient, we review this element of Porter’s *Strickland* claim *de novo*. *Rompilla v. Beard*, 545 U. S. 374, 390 (2005). It is unquestioned that under the prevail-

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ing professional norms at the time of Porter’s trial, counsel had an “obligation to conduct a thorough investigation of the defendant’s background.” *Williams v. Taylor*, 529 U. S. 362, 396 (2000). The investigation conducted by Porter’s counsel clearly did not satisfy those norms.

Although Porter had initially elected to represent himself, his standby counsel became his counsel for the penalty phase a little over a month prior to the sentencing proceeding before the jury. It was the first time this lawyer had represented a defendant during a penalty-phase proceeding. At the postconviction hearing, he testified that he had only one short meeting with Porter regarding the penalty phase. He did not obtain any of Porter’s school, medical, or military service records or interview any members of Porter’s family. In *Wiggins v. Smith*, 539 U. S. 510, 524, 525 (2003), we held counsel “fell short of . . . professional standards” for not expanding their investigation beyond the presentence investigation report and one set of records they obtained, particularly “in light of what counsel actually discovered” in the records. Here, counsel did not even take the first step of interviewing witnesses or requesting records. Cf. *Bobby v. Van Hook*, *ante*, at 6–8 (holding performance not deficient when counsel gathered a substantial amount of information and then made a reasonable decision not to pursue additional sources); *Strickland*, 466 U. S., at 699 (“[Counsel’s] decision not to seek more character or psychological evidence than was already in hand was . . . reasonable”). Beyond that, like the counsel in *Wiggins*, he ignored pertinent avenues for investigation of which he should have been aware. The court-ordered competency evaluations, for example, collectively reported Porter’s very few years of regular school, his military service and wounds sustained in combat, and his father’s “over-disciplin[e].” Record 902–906. As an explanation, counsel described Porter as fatalistic and uncooperative. But he acknowledged that



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although Porter instructed him not to speak with Porter’s ex-wife or son, Porter did not give him any other instructions limiting the witnesses he could interview.

Counsel thus failed to uncover and present any evidence of Porter’s mental health or mental impairment, his family background, or his military service. The decision not to investigate did not reflect reasonable professional judgment. *Wiggins, supra*, at 534. Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation. See *Rompilla, supra*, at 381–382.

### III

Because we find Porter’s counsel deficient, we must determine whether the Florida Supreme Court unreasonably applied *Strickland* in holding Porter was not prejudiced by that deficiency. Under *Strickland*, a defendant is prejudiced by his counsel’s deficient performance if “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U. S., at 694. In Florida, the sentencing judge makes the determination as to the existence and weight of aggravating and mitigating circumstances and the punishment, Fla. Stat. §921.141(3), but he must give the jury verdict of life or death “great weight,” *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975) (*per curiam*). Porter must show that but for his counsel’s deficiency, there is a reasonable probability he would have received a different sentence. To assess that probability, we consider “the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding”—and “reweig[h] it against the evidence in aggravation.” *Williams, supra*, at 397–398.

This is not a case in which the new evidence “would barely have altered the sentencing profile presented to the

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sentencing judge.” *Strickland, supra*, at 700. The judge and jury at Porter’s original sentencing heard almost nothing that would humanize Porter or allow them to accurately gauge his moral culpability. They learned about Porter’s turbulent relationship with Williams, his crimes, and almost nothing else. Had Porter’s counsel been effective, the judge and jury would have learned of the “kind of troubled history we have declared relevant to assessing a defendant’s moral culpability.” *Wiggins, supra*, at 535. They would have heard about (1) Porter’s heroic military service in two of the most critical—and horrific—battles of the Korean War, (2) his struggles to regain normality upon his return from war, (3) his childhood history of physical abuse, and (4) his brain abnormality, difficulty reading and writing, and limited schooling. See *Penry v. Lynaugh*, 492 U.S. 302, 219 (1989) (“[E]vidence about the defendant’s background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable”). Instead, they heard absolutely none of that evidence, evidence which “might well have influenced the jury’s appraisal of [Porter’s] moral culpability.” *Williams*, 529 U.S., at 398.

On the other side of the ledger, the weight of evidence in aggravation is not as substantial as the sentencing judge thought. As noted, the sentencing judge accepted the jury’s recommendation of a death sentence for the murder of Williams but rejected the jury’s death-sentence recommendation for the murder of Burrows. The sentencing judge believed that there were four aggravating circumstances related to the Williams murder but only two for the Burrows murder. Accordingly, the judge must have reasoned that the two aggravating circumstances that were present in both cases were insufficient to warrant a death sentence but that the two additional aggravating

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circumstances present with respect to the Williams murder were sufficient to tip the balance in favor of a death sentence. But the Florida Supreme Court rejected one of these additional aggravating circumstances, *i.e.*, that Williams' murder was especially heinous, atrocious, or cruel, finding the murder "consistent with . . . a crime of passion" even though premeditated to a heightened degree. 564 So. 2d, at 1063–1064. Had the judge and jury been able to place Porter's life history "on the mitigating side of the scale," and appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the advisory jury—and the sentencing judge—"would have struck a different balance," *Wiggins*, 539 U. S., at 537, and it is unreasonable to conclude otherwise.

The Florida Supreme Court's decision that Porter was not prejudiced by his counsel's failure to conduct a thorough—or even cursory—investigation is unreasonable. The Florida Supreme Court either did not consider or unreasonably discounted the mitigation evidence adduced in the postconviction hearing. Under Florida law, mental health evidence that does not rise to the level of establishing a statutory mitigating circumstance may nonetheless be considered by the sentencing judge and jury as mitigating. See, *e.g.*, *Hoskins v. State*, 965 So. 2d 1, 17–18 (Fla. 2007) (*per curiam*). Indeed, the Constitution requires that "the sentencer in capital cases must be permitted to consider any relevant mitigating factor." *Eddings v. Oklahoma*, 455 U. S. 104, 112 (1982). Yet neither the postconviction trial court nor the Florida Supreme Court gave any consideration for the purpose of nonstatutory mitigation to Dr. Dee's testimony regarding the existence of a brain abnormality and cognitive defects.<sup>7</sup> While the State's

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<sup>7</sup>The Florida Supreme Court acknowledged that Porter had presented evidence of "statutory and nonstatutory mental mitigation," 788

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experts identified perceived problems with the tests that Dr. Dee used and the conclusions that he drew from them, it was not reasonable to discount entirely the effect that his testimony might have had on the jury or the sentencing judge.

Furthermore, the Florida Supreme Court, following the state postconviction court, unreasonably discounted the evidence of Porter's childhood abuse and military service. It is unreasonable to discount to irrelevance the evidence of Porter's abusive childhood, especially when that kind of history may have particular salience for a jury evaluating Porter's behavior in his relationship with Williams. It is also unreasonable to conclude that Porter's military service would be reduced to "inconsequential proportions," 788 So. 2d, at 925, simply because the jury would also have learned that Porter went AWOL on more than one occasion. Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did.<sup>8</sup> Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter.<sup>9</sup>

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So. 2d, at 921, but it did not consider Porter's mental health evidence in its discussion of nonstatutory mitigating evidence, *id.*, at 924.

<sup>8</sup>See Abbott, *The Civil War and the Crime Wave of 1865–70*, 1 Soc. Serv. Rev. 212, 232–234 (1927) (discussing the movement to pardon or parole prisoners who were veterans of the Civil War); Rosenbaum, *The Relationship Between War and Crime in the United States*, 30 J. Crim. L. & C. 722, 733–734 (1940) (describing a 1922 study by the Wisconsin Board of Control that discussed the number of veterans imprisoned in the State and considered "the greater leniency that may be shown to ex-service men in court").

<sup>9</sup>Cf. Cal. Penal Code Ann. §1170.9(a) (West Supp. 2009) (providing a special hearing for a person convicted of a crime "who alleges that he or she committed the offense as a result of post-traumatic stress disorder,

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The evidence that he was AWOL is consistent with this theory of mitigation and does not impeach or diminish the evidence of his service. To conclude otherwise reflects a failure to engage with what Porter actually went through in Korea.

As the two dissenting justices in the Florida Supreme Court reasoned, “there exists too much mitigating evidence that was not presented to now be ignored.” *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part). Although the burden is on petitioner to show he was prejudiced by his counsel’s deficiency, the Florida Supreme Court’s conclusion that Porter failed to meet this burden was an unreasonable application of our clearly established law. We do not require a defendant to show “that counsel’s deficient conduct more likely than not altered the outcome” of his penalty proceeding, but rather that he establish “a probability sufficient to undermine confidence in [that] outcome.” *Strickland*, 466 U. S., at 693–694. This Porter has done.

The petition for certiorari is granted in part, and the motion for leave to proceed *in forma pauperis* is granted. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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substance abuse, or psychological problems stemming from service in a combat theater in the United States military”); Minn. Stat. §609.115, Subd. 10 (2008) (providing for a special process at sentencing if the defendant is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist).



**New York State Defenders Association**  
**Veterans Defense Program**  
**Activities Report**  
*Defending Those Who Defended Us*









## **NYSDA Veterans Defense Program**

### **Activities Report**

October 2015

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# Veterans Defense Program

## Activities Report

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\*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

# Veterans Defense Program

## *Defending Those Who Defended Us*

**The Veterans Defense Program (VDP) provides in-depth training, support, and legal assistance to engender informed and zealous representation of veterans and service members in the New York State criminal and family court systems.** The VDP assists public defense attorneys to take a treatment-oriented approach when representing veterans suffering from the invisible wounds of war, such as Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and/or depression.

**The VDP—the first in the nation—was launched in response to a crisis situation where growing numbers of veterans with untreated, service-related mental health illnesses are lost in the criminal justice system.** Studies have reported epidemic numbers of Iraq and Afghanistan War veterans with mental health illnesses. Previous research found significant numbers of Vietnam War veterans had undiagnosed PTSD. Sadly, approximately 112,000 veterans in New York State have mental health ailments, and studies show 50% are not receiving treatment. The U.S. Veterans Administration (VA) and Institute of Medicine report such veterans are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct.

VDP Legal Director, Art Cody, a retired Navy Captain and Afghanistan veteran, describes why the VDP was created. “The most vulnerable of our returning warriors, those who have been injured either physically or mentally and are now in the criminal justice system because of those injuries, are often somehow removed from those ‘troops’ that we

support. We support the troops and thank them for their service until they get arrested. Very often their military experiences, which a civilian judge or jury would have a very difficult time understanding, are at the core of their involvement in the criminal justice system. It is difficult for a civilian judicial system to understand what it means to undergo rocket attacks 5 days a week for months on end or know what it is like to spend days crouched in a bunker in fear for your life. That has an effect on you that is difficult to recover from when you get back home. The VDP’s goal is to ensure that each veteran has an effective advocate; each veteran’s story is properly presented to a judge, jury, and prosecutor; and veterans get the treatment they need and deserve.”

The VDP’s goal is to ensure that each veteran has an effective advocate; each veteran’s story is properly presented to a judge, jury, and prosecutor

**Staffed by award-winning attorneys with deep experience working with veterans, the VDP is committed to giving veterans access to the best possible legal representation. Veterans with battle-borne illnesses need treatment and an alternative resolution process in the criminal justice system.** The VDP’s zealous legal advocacy takes a comprehensive client-centered approach, which can include mental health evaluation and treatment, counseling, and liaison with support

groups. The VDP trains and assists public defenders and other defense counsel representing veterans to encourage mitigation and treatment, and to avoid the significant collateral consequences that flow from criminal convictions. Effective representation of veteran clients involves defense counsel’s understanding of military culture and experience, effects of military trauma, and resources available to veterans.

The VDP is supported by many organizations, including the NYS Council of Veterans Organizations, American Legion, VFW, Marine Corps League, Military Order of the Purple Heart, Rochester Veterans Outreach Center, Clear Path for Veterans, One-Stop Veterans Center of Western New York, Chief Defenders Association of NYS, Brooklyn Defender Services, NYC Office of the Appellate Defender, The Legal Aid Society, and many county public defense offices, as well as state and federal officials, including US Senator Kirsten Gillibrand.

The VDP received a critically important appropriation

in the 2015/2016 state budget. Many thanks for the key support of NYS Senator Thomas Croci and NYS Assemblyman Michael DenDekker, Chairmen of the Senate and Assembly Veterans Affairs Committees, and Senate Majority Leader John Flanagan and Assembly Speaker Carl Heastie. Thanks also to the support of a host of other state legislators, especially Senators George Amedore, Hugh Farley, Joseph Griffo, William Larkin, Betty Little, Kathleen Marchione, Terrance Murphy, Robert Ortt, Michael Ranzenhofer and Jim Seward; and Assembly members Jeffrion Aubry, Anthony Brindisi, Herman Farrell and Joseph Lentol.

**The Veterans Defense Program—the first in the nation—provides training and legal assistance to attorneys defending veterans and encourages restorative justice programs for veterans suffering from the invisible wounds of war.**

# Summary of Veterans Defense Program Activities & Accomplishments

**Since its launch in the Spring of 2014, the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.**

The VDP's assistance provides a second chance for veterans who have lost their way and facilitates a treatment-oriented mitigation approach focusing on restoration and rehabilitation.

## Legal Assistance for Over 100 Veteran Criminal Justice Cases

### ■ Veteran Case-Specific Litigation:

The VDP represented five veterans whose cases addressed a systemic problem, established a precedent, and presented a great need requiring an extensive expenditure of time and assistance. The VDP's zealous representation resulted in 3 case victories and veterans were saved from incarceration, provided leniency by the court, and sentenced to treatment to address their mental health ailments and/or substance abuse. For instance, the VDP produced three sets of motions, a sentencing memorandum, and a 440 resentencing motion, in addition to numerous court appearances, for the CJ Smith case alone. (See CJ Smith and Roger Ford Case Studies. Names have been changed for privacy protection.)

... the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.

- For CJ Smith, the VDP's direct representation resulted in the young Afghanistan-deployed Army soldier with PTSD finally having his day in court. CJ will have a hearing this Fall and an opportunity for treatment and justice after being held in jail for almost two years pre-trial for a first-time offense of residential burglary.
- Roger Ford, an Army Military Police veteran, suffered from survivor's guilt, severe anxiety and depression resulting from four of his unit members all being killed in action in Iraq. The VDP's direct representation led to a dismissal of a felony charge and an adjournment in contemplation of dismissal for a misdemeanor, relating to an incident where police alleged he misidentified himself as an active service member. After the court appearance, the VDP staff escorted Roger to a Veterans Center, where he is now receiving assistance with his mental health issues.

■ **Chief Public Defender Assistance Visits:** Office visits were conducted with Chief Defenders at eleven county Public Defense Programs to train, educate and advise staff on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting with service programs for veteran clients.

- **Public Defender Backup Support:** The VDP served as a day-to-day backup resource for attorneys in 120 county-based public defender offices, legal aid agencies, and assigned counsel offices, and for individual veterans and their families.

- **Assisted Defense Counsel by providing substantial help on 104 veteran cases**, including both criminal and family court cases. Seventy-four cases have been closed.

- For Patrick Kelly, an Afghanistan-deployed Army medic facing burglary and weapons charges, the VDP provided a mitigation memorandum outlining the sources and effects of his severe PTSD. Patrick was facing a five year state prison sentence. As a result of the VDP's mitigation efforts, the prosecution offered probation. At the hearing, the court concluded, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition for you." The VDP succeeded in obtaining justice for Patrick, helping him to once again be a productive member of society.
- For Joe Gallo, the court agreed with the VDP's mitigation request and undertook a therapeutic approach, sentencing this Army Sergeant to PTSD and drug abuse treatment. Joe suffered for years from undiagnosed PTSD and now is able to heal from his Iraq experience, and return to his family.

- **Assisted Defense Counsel by conducting 117 veteran client interviews** across the state. A majority of the interviews were done by the VDP attorneys, either in the case of direct representation or

for purposes of preparing a Mitigation Memorandum. In some cases, the veteran client's public defense attorney joined the interview. Some clients were seen on multiple occasions.

... the court concluded,  
"Mr. Kelly, heal, integrate,  
become whole again,  
as you provided a great  
service to this country.  
We are thankful for that  
and want this wonderful  
disposition for you."

- **Assisted Defense Counsel by writing important case-specific legal documents**, including nine in-depth Mitigation Memoranda, three Bail Release Memoranda and a Motion to Dismiss in the Interest of Justice.

- **Responded to over 150 veterans by providing expert referrals and/or information** on legal rights, benefits, VA procedures, health and other services.

## ***Comprehensive Training for 600 Lawyers Defending Veterans***

- **Intensive Point Person Training:** The VDP held intensive two-day "Point Person" trainings for over 50 public defenders to establish one or two attorneys in each office as internal point persons, trained to serve as knowledgeable first resources for their office and as liaisons to the VDP.

### ■ **Legal Trainings**

The VDP provided extensive legal training to over 600 public defenders, legal aid society attorneys and assigned counsel





### ***Training Public Defenders***

VDP Director Gary Horton speaks at a Westchester County training in September 2015.

This was the best training I have ever attended.  
– Public Defender

in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, “This was the best training I have ever attended.” The VDP is also planning to institute training presentations in the near future on a secure YouTube website which will be accessible and free for public defense attorneys.

## ***Education & Research for Justice-Involved Veterans***

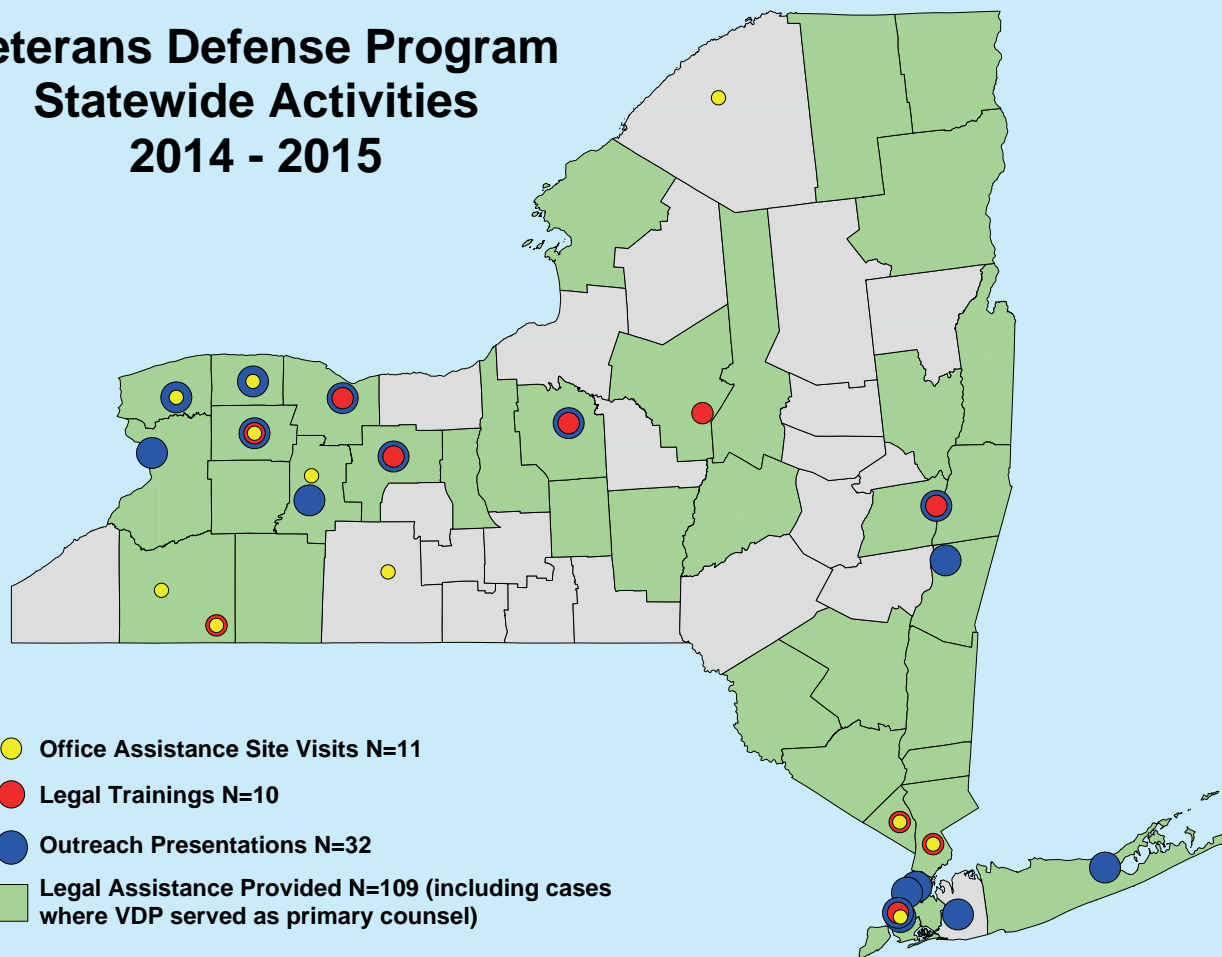
■ **VDP Outreach Meetings:** The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues, such as Bronx Defenders, Brooklyn Defender Services, Harlem Vet Center, American Legion, Chief Defender Association, Syracuse Law School Veterans Clinic, Veterans

of Foreign Wars, Bar Associations, and Veterans Outreach Center. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

■ **Veteran Treatment Court Visits:** The VDP visited four major Veteran Treatment Courts (VTCs) to meet the Judges and staff and gauge the vitality, effectiveness and procedures of these courts. The VDP visited the City of Buffalo VTC, Monroe County VTC, Niagara County VTC, and Albany County VTC. The VTCs take a therapeutic jurisprudence or treatment-oriented approach, and utilize the important support of veteran mentors. Operating in less than a third of New York State counties, the VTCs largely focus on misdemeanor crimes. The VDP seeks the same treatment-oriented approach in more serious cases in the criminal courts for veterans and service members suffering from battle-borne mental health ailments.



## Veterans Defense Program Statewide Activities 2014 - 2015



# Veterans Defense Program Testimonials

## What Veterans Are Saying About the VDP

"I think the VDP attorneys are literally saving lives with their knowledge and expertise. They have greatly impacted my life on a positive note. I am forever grateful and in your debt for what you have done for me." *Ross Keim, Disabled & Medically Retired U.S. Army Military Policeman*

"I truly believe if I did not have you in my corner backing me, I would more than likely be in jail and worse off. The service that the VDP provides is invaluable. The legal system does not know what difficulties veterans face when they come home from war, and what demons they carry within themselves. The VDP advises the court system of exactly what myself and my fellow veterans have been through, and what we are currently going through, in an effort to lessen the blow that the legal system will levy against a veteran who has committed a crime. There needs to be a VDP in every court system." *Terry Travis, U.S. Marine Sergeant, Two Iraq Tours*

"After three years and two heart attacks, and trying to get the justice system to understand my dilemma, I was desperate and disabled. VDP acted immediately and restored my dignity and faith in the system. It is the best thing to come along for a veteran who needs help in criminal matters; an organization that has a heart and soul. They have truly saved me and my family from years of anguish." *Lawrence Fuchs, U.S. Army Vietnam Veteran*

"As a retired Army Lieutenant Colonel, Purple Heart recipient and Founding Partner of a law firm with offices across New York State, I personally know of the unique needs of veterans, especially those suffering from the invisible wounds of war. The risk of those untreated veterans becoming involved in the criminal justice system is at an all-time high. I, and the members of the Military Order of the Purple Heart in New York State, strongly support the VDP and appreciate their important work to help justice-involved veterans regain their status as productive members of society." *Matthew Tully, NYS Department Commander, Military Order of the Purple Heart of the U.S.A.*



"I can't explain how thankful I am that you guys took on my case. It's been a roller coaster ride right from the gate. It's been an honor to have met all of you." *Ljube Terzioski, U.S. Army Afghanistan Veteran.* "Out of the sky drops a bunch of angels called the VDP. Like a whirlwind, you amazing people knew what to do to help my son." *The Gaston & Terzioski Family*



"I felt like [the VDP] was speaking from MY heart in the mitigation report and I could not have found a better voice... The difference the mitigation brief brought to the case was like night and day." *Petre Ivan, U.S. Army Afghanistan Veteran*

"Our statewide veteran council, representing 37 veteran groups, such as the Marines, VFW and Disabled American Veterans, strongly support the critically important work of the VDP. A number of our members have been helped by the VDP and their advocacy for mitigation and treatment to heal a veteran's battle-borne illness. Justice-involved veterans need the VDP. The VDP is truly defending those who defended America." *Tom DeMeo, President, NYS Council of Veterans Organizations*

## ***What Government Officials Are Saying About the VDP***

"I am writing to express my unwavering support for the VDP as it effectively broadens the scope of services provided to our nation's bravest patriots. Defending veterans who encounter NYS's criminal or family court system is a noble feat, yet the VDP seeks to serve beyond the walls of the courtroom. The implementation of pilot projects like the Veterans Restorative Justice offer much needed opportunities for veterans. With the VDP's past achievements and anticipated future successes, the program could become a model for others across the nation." *U.S. Senator Kirsten Gillibrand*

"I commend NYSDA for launching the Veterans Defense Program. I created the nation's first Veterans Treatment Court in Buffalo, NY to address the unique needs of veterans, especially those suffering from PTSD, TBI, military sexual trauma and major depression. By identifying a veteran upon his or her arrest, their needs can be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism and help our veterans lead sober, healthy, and productive lives." *Judge Robert T. Russell, Jr., City Court Judge, City Court of Buffalo*

"The VDP's work is critical to veterans and service members who find themselves in the family court or criminal court system, especially those who are suffering from mental health illnesses. They help the most vulnerable of our returning warriors by guiding attorneys in how to ensure that the courts consider treatment programs for veterans with military-related PTSD, TBI, and depression." *Congressman Paul Tonko (20th District)*

"The Veterans Defense Program showed compassion and care when it seemed no one else could or would [for an Afghanistan veteran]. The VDP is a small group of legal professionals whose services are desperately needed here in New York. They should flourish and expand so that more of our veterans, damaged in the service of their country, can be helped through their own individual nightmare." *Assemblyman Marc Butler (R-Herkimer)*

## ***What Public Defense Attorneys & Organizations Are Saying About the VDP***

“I am impressed with the outstanding work of the VDP attorneys. Their presentation at the Chief Defender Convening was inspiring and informative, and their written advocacy on behalf of Veteran CJ in the post-judgment motion was superb. I am quite hopeful that with the VDP's continued advocacy at the hearing, the court will reduce CJ's harsh and excessive sentence.” *Richard Greenberg, Attorney-in-Charge, NYC Office of the Appellate Defender*

“In my travels, I have never come across anything like the VDP. I had the honor of presenting at their 2014 statewide training, and was blown away by the quality and depth of their program. This program is literally breaking new ground—the first of its kind in the country—using sophisticated veterans defense knowledge to assist criminally-charged veterans across NYS, and train attorneys in the art and science of defending veterans.” *Attorney Brockton Hunter, U.S. Army veteran and author of the seminal legal treatise, The Attorney's Guide to Defending Veterans in Criminal Court*

“I enthusiastically support the VDP. I and my staff appreciate their skilled assistance as they strategically support our representation of veterans and service members. Most recently, they assisted us on a case involving a former infantry soldier charged with weapons and drug related offenses. The VDP's expertise is invaluable to such representations.” *Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services*

“The VDP's assistance, resources, techniques, and tips were invaluable in formulating an effective defense strategy. VDP helped me steer the case towards a treatment program to address my client's pathology and prevent a reoccurrence, rather than incarceration, allowing this individual to remain a productive member of society instead of a mere statistic.” *Aaron Dean, Chenango County Assistant Public Defender*

“I am truly grateful for your incredibly speedy responses and helpfulness. What a tremendous resource you provide.” *Attorney Stephanie Pope, The Legal Aid Society*

“The VDP has been a tremendous real time resource to my office. The provision of vigorous defense for veterans of our armed forces is invaluable.” *Robert Linville, Columbia County Public Defender*

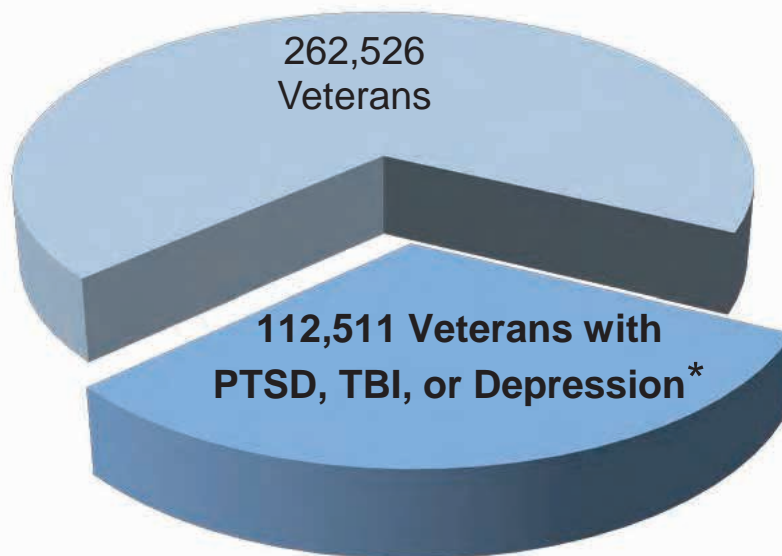
“The VDP provides much-needed legal training and support for lawyers defending veterans struggling with mental health issues. At BPI, we estimate that nearly 30 students of the approximately 800 who have enrolled in our college are veterans; more broadly, it is estimated that 1 in 10 prisoners in the NYS prison system are veterans. Providing veterans in the criminal justice system with meaningful legal representation is critical and timely.” *Laura Liebman, Bard Prison Initiative*

“Hofstra Law School fully supports the VDP and the tremendous efforts it makes on behalf of justice-involved veterans throughout the state.” *Jennifer Gundlach, Clinical Professor of Law, Hofstra Law School.*





**An estimated 30% or 112,511 Vietnam & Post-9/11 Veterans have PTSD, TBI, or Depression in New York State**



**Significant treatment gaps exist. Only about 50% of Post-9/11 veterans with mental health ailments are receiving treatment, and the estimates are much lower for Vietnam veterans.**

***The Institute of Medicine and the U.S. Dept. of Veterans Affairs report such veterans are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct.***

Source: *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences & Services to Assist Recovery*, RAND Corporation, 2008.

# VDP Veteran Case Studies\*

## ***VDP Challenges Harsh Sentence for Veteran's First-time Burglary Offense, Seeking PTSD Treatment & Mitigation***



**U.S. Army Specialist CJ Smith:** For almost two years, a young Afghanistan-deployed veteran was held in an upstate New York jail without trial for his first offense: burglary with two friends while under the influence of alcohol, a few months after returning from a combat zone with untreated PTSD, depression, and substance abuse.

CJ joined the elite 173rd Airborne Brigade Combat Team and later deployed to Forward Operating Base Shank in Afghanistan, in a region frequently described as “the most dangerous place in the world.” Private First Class CJ often endured rocket and mortar barrages five days a week for months on end. He had colleagues killed and close friends injured. One such incident haunted him. He was standing in a long line at the PX with his battle buddy when he realized he had forgotten his wallet and left to recover it. A few minutes later, a rocket hit the spot where he had been standing, and his buddy was hit by shrapnel, losing both legs. CJ’s colleague eventually recovered from his life threatening wounds but CJ obsessed over this incident and thought continually, *“It could have been me. Why not me? Was it luck? Fate? I don’t know how not to think about it.”* He came home *“a very broken man,”* said his mother. He suffered from depression and undiagnosed PTSD which led to self-medicating with alcohol.

Both his appointed lawyer and the Judge ignored the links between his battle-borne mental impairments and his offense. The VDP took on his case and sought a treatment-

oriented approach and mitigation. VDP’s mental health expert evaluated CJ and diagnosed him with service-related PTSD. At the VDP’s request, the Judge promised a sentencing hearing to hear from witnesses regarding his military service and mitigating circumstances. In preparation, the VDP wrote a sentencing memorandum which outlined some of the witnesses’ proposed testimony. Surprisingly, the Judge stated he had enough information from the memorandum and denied the promised hearing, sentencing CJ to 8 years in prison.

*He came home “a very broken man,” said his mother.*

Challenging this harsh sentence in a post-conviction application, the VDP argued that the Judge’s reasoning “smacks of a Catch 22. In short, in order to get a sentencing hearing, CJ was required to provide a sentencing memorandum. Yet precisely because CJ’s attorneys submitted the desired memorandum, complying with the Court’s order, he was denied the very sentencing hearing he sought.”

The VDP filed a Notice of Motion to Vacate Conviction & Set Aside Sentence noting the length of time already served, and the contributing factor of his service-related mental health ailment. The VDP was successful in having another Judge grant a motion to hold a sentencing hearing wherein mental health experts and his military superiors will testify on his behalf. A sentencing hearing is scheduled for late Fall. **Finally, after two years, this young veteran will have his day in court and an opportunity for treatment and justice.**

\*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

## ***VDP Successfully Secured Treatment for Iraq Veteran Suffering From Severe PTSD, Back Injuries, & Substance Abuse***



**U.S. Army Private First Class Tom Donner:** Tom was slated for Military Intelligence, but requested the Infantry as he wanted to *“be in the action”* in Iraq. In 2003, he took part in the invasion of Iraq and his platoon experienced heavy battle conditions, undergoing machine gun fire, rockets, and rocket-propelled grenades. One of the first platoons to enter Bagdad, his company was described as the *“tip of the spear”* in the assault. Tom received four medals for his service, including the Bronze Service Star. According to the VA medical records, Tom was exposed to extremely harsh military trauma and suffered considerable combat guilt. He had recurring nightmares and the smell of burnt flesh in his dreams, saying *“we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”* He began to self-medicate with alcohol and marijuana and was discharged from the Army.

On returning home, he went from job to job, suffering from undiagnosed PTSD, insomnia, and substance abuse. His childhood friend said, *“Tom changed a lot after his army service. He started drinking a lot, especially at night, as it was the only way he could sleep. But with the nightmares, he would only sleep 3 to 4 hours a night if he was lucky.”* Ten years later, he went to the VA seeking help for severe back pain and a continuing sleep disorder. He reported that in 2003, he had hit his head and back when he had fallen off an infantry fighting vehicle. The VA diagnosed him with back injuries, PTSD, and Substance Abuse Disorder. He entered VA and Warriors Salute programs and his discharge summary stated that he was *“fully engaged in treatment and has*

*made good progress... He believes...the treatment has greatly helped him to modify his behavior and improve his coping. He hopes to be able to maintain stable functioning, to be able to better provide for his daughter.”*

Tom was abstinent for over five months, when he relapsed after a very close veteran friend in his VA treatment program overdosed and died. He was arrested for a Misdemeanor Aggravated DWI the day after his friend’s death. He went back to the VA program. A VA social worker stated that, *“In spite of significant PTSD symptoms ...positive factors include supportive parents, an extremely strong bond with his daughter, his desire to work, and motivation for treatment and occupational advancement.”*

*He had recurring nightmares and the smell of burnt flesh in his dreams, saying “we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”*

The VDP provided the North Country public defender representing Tom with ongoing support and co-authored his Mitigation Memorandum in Support of a Bail Application, which stated that *“while incarcerated, Tom cannot receive adequate care for his back condition and PTSD. He is removed from familial supports...and continued incarceration threatens the progress he has made. The VA is prepared to refer Tom to further residential treatment.”* It concluded that, *“We as a society owe him appropriate care so that he can regain his place in his community.”* **The Judge agreed to a “bed-to-bed” release, thus enabling**

**Tom to enter an inpatient PTSD program and continue treatment to finally heal from his battle-borne ailments and be restored to his family.**



## VDP Seeks Bail & Treatment for Army Veteran Acting in Self-Defense in Life-Threatening Situation

**U. S. Army Specialist Rick Jones:** Rick is deeply patriotic and after 9/11 he sought military service, eventually serving for fifteen months as part of Operation Iraqi Freedom. He deployed to Forward Operating Base (FOB) Pasab in Khandahar province, one of the deadliest areas in Afghanistan. He was under fire on a daily basis almost immediately upon arriving at the FOB. His Sergeant stated that Rick's job as a cook in no way exempted him from fighting, and upon hearing incoming fire, Rick would immediately run to join his 10th Mountain infantrymen colleagues. Jones engaged in 2 to 5 firefights a week and his Sergeant stated that he was *"one of the most level headed soldiers I have ever seen in a combat situation... acting as if he was a much older and seasoned veteran than he was."*

Rick was known for helping his friends in need, and on the death of a soldier, he counseled one young man who was hit very hard by the death, causing his supervisor to say, *"Such compassion and care for a fellow soldier in my opinion is a rare sight."* In 2011, six months after his deployment, Rick suffered a seizure as his epilepsy medications did not arrive in time. He fell and had a head injury during the seizure and was medically evacuated back to America. Rick repeatedly requested to stay with his unit and felt guilty at leaving his colleagues behind. His requests were denied and he was ordered to his unit's homebase, Fort Drum. His supervisor found that he was extremely dependable, noting that "things would get done in an efficient and professional manner" and he continued to mentor soldiers and take on additional responsibilities. A few years later, due to reoccurring seizures, the Army medically retired Rick with an Honorable Discharge. Married with a young son, Rick's wife serves as a Sergeant at Fort Drum and provided for their financial needs after his discharge.

Rick's serious epilepsy health conditions and his lack



of employment led him to depression and intermittent substance abuse. On an overnight visit to a medical specialist for his child in a nearby city, he relapsed and found himself caught up in a life-threatening situation when he attempted to purchase drugs. He was abducted, trapped in a crack house, and held against his will. He was threatened by drug dealers with guns and believed that if he left, he would be shot. He asked the dealers to return his car and they angrily refused. In fear for his life, Rick sought to disarm an armed perpetrator and a struggle ensued. Rick disarmed the man, but he continued to come

at him, and Rick was forced to shoot him in self-defense. Rick was charged with Manslaughter in the 1st degree and, if convicted, will face 5 to 25 years. The VDP and Rick's public defense attorney urged the court to appreciate his military background, noting that Rick "as a well-trained soldier, assessed that his actions were necessary to defend himself from a gun wielding crack dealer. *In essence, Rick's training took over: he reasonably perceived the crack dealer to be an immediate threat to him, made efforts*

*to disarm him, and then was forced to shoot him to curtail his continued advances."*

Many friends, fellow soldiers, and family members submitted statements in support of Rick after his arrest, attesting to his exemplary character in terms of dedication to his country, family, and community. They all noted that his reputation is that of a caring person actively concerned about the welfare of others. **The VDP and Rick's attorney are seeking substance abuse treatment, emphasizing that Rick is a highly decorated veteran with no criminal record, and is a model family man. At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.**

At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.



## ***VDP Obtains Extensive Treatment for Severely Traumatized & Suicidal Army Veteran Facing Weapons Charge***



**U.S. Army Specialist Patrick Kelly:** Patrick enthusiastically joined the New York Army National Guard and was deployed to Afghanistan as a Combat Medic in 2012. His supervisors said he was a “model soldier,” and he was “competent, hardworking and dedicated.” He served as a clinical caretaker in a combat theater at the Troop Medical Clinic at Kandahar Air Field (KAF), where amidst continual rocket fire he unloaded helicopters of dead and wounded soldiers for four months. He described feeling shock and helplessness, saying, *“I can’t believe how fragile life is.”*

He was transferred to work as a medic at the Detention Facility in Parwan (DFIP), which held insurgent prisoners who had killed Americans or had contributed to the planning of major attacks on Americans. Work conditions were extremely harsh with physical violence, verbal threats, and frighteningly weak security, creating an environment of severe fatigue and trauma with which Patrick struggled to cope. He worked in a dark, dungeon-like facility amidst constant threats, with spit and other bodily fluids thrown on him, while he medically treated 2,000 patients in 12 hour shifts over 6 weeks. He treated severe battlefield injuries, broken bones, and administered medications to the mentally unstable Taliban prisoners. Often his mornings at the DFIP would include treating sexual injuries as the prisoners would violently injure each other in sexual games, and this caused him much emotional stress. Patrick and his teammates lived in near constant dread of death. According to his immediate supervisor, the “Afghan staff would mishandle locking mechanisms and keys for cells containing dozens of detainees that made no secret of wanting to kill us.” In addition, Patrick and his colleagues were forced to live in soft tents next to a loud and active construction site and a mine field leaving him only a few hours of sleep a day for two months.

*He described  
feeling shock and  
helplessness, saying,  
“I can’t believe how  
fragile life is.”*

He was then transferred to the Navy Trauma Center at KAF, *“known as the trauma capital for the Afghanistan campaign, with soldiers handling the worst of what combat has to offer,”* said his supervising officer. Part of his duties included assisting in the loading of fallen soldiers onto transport planes going back home. He was profoundly impacted when one of the loadings involved a soldier, killed in action, whose neck injury Patrick had treated earlier that year. Shortly after, his Sergeant recalled he found him *“crying and distressed after learning of his wife’s infidelity with one of his closest Army colleagues.”* Patrick was honorably discharged and returned home, receiving an Army Commendation Medal for providing medical care for over 2,000 enemy combatant detainees composed mostly of insurgent leaders, and for helping over 5,000 patients in a high risk detention facility. Patrick suffered from monumental trauma as a medic in Afghanistan which was exacerbated by his distress over his wife’s infidelity.

Less than a month after returning home, Patrick went to the VA Emergency Room in extreme anguish, unable to sleep, suicidal, and drinking heavily. The VA gave Patrick the maximum rating for PTSD and also diagnosed him with depression and anxiety. He has made significant strides in his PTSD treatment and has stopped drinking. Unfortunately, early in his therapy program, he was pulled over by the police and they found a gun in his car trunk. Upon questioning, he said its only purpose was in case he decided he wanted to *“shoot himself.”* He was arrested on a charge of Criminal Possession in the 2nd degree, facing up to 5 years in prison.

The VDP assisted a lawyer representing Patrick and wrote a Mitigation Memorandum which urged the Court to provide

leniency and treatment for his battle-borne PTSD. The VDP pointed out that the VA staff treating Patrick reported he had not fully reintegrated at the time of the incident, and was suicidal. The VDP stated that incarceration would have a negative effect on his mental health and retard recovery as there is no VA PTSD treatment program for incarcerated veterans, and urged that in the interests of justice, Patrick receive a treatment requirement.

The Judge and the Prosecution were impressed by the Mitigation Memorandum detailing Patrick's traumatic military experience. After learning of Patrick's trauma and health problems, the Assistant District Attorney said, "what we really need for the defendant is the opportunity for him to get 100% better...I want him to get better." The Prosecution agreed to a disposition wherein Patrick

would not be incarcerated but rather upon his successful completion of two additional years of therapy, the felony charge against him would be dismissed and he would be on probation for the misdemeanor for three additional years. **The Judge said, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition." The Judge then noted, "I thank you as well Mr. Cody [VDP Legal Director] for your presence and insight. It was very, very helpful in closing the window on this case." The VDP succeeded in obtaining justice for Patrick, helping him to get extensive treatment and family restoration so he can again be a productive member of society.**

## ***VDP Obtains Multi-Faceted Treatment for Marine with PTSD & TBI***

**U. S. Marine Sgt. Timothy Polaski:** Tim has extensive military experience with the U.S. Marine Corps, including an Iraq deployment in 2009, where he achieved the rank of Sergeant. Beforehand, he suffered from trauma as his father and two siblings were physically abusive during his childhood in an upstate city, resulting in a skull fracture and other injuries. Sadly, his mother tried to commit suicide three times and then had early onset dementia. Throughout all of this tragedy, Tim never received any counseling. He was inspired to join the Marines at eighteen by the example of his brother-in-law who he looked to as a father figure. He trained as an Assault Infantryman and was assigned to an Anti-terrorism Battalion and deployed to Iraq. Tim was seriously injured during a nighttime convoy operation while serving as a gunner. His vehicle hit a bomb crater and during the impact, he was hit in the face with a 300 lb. tow bar and thrown from the vehicle. It was three days, after the convoy mission was complete, before Sgt. Polaski could obtain medical care for his serious back injury.

Three months after the incident, he was redeployed home. He has relatively

*With his ongoing physical  
pain and his untreated  
mental health ailments, Tim  
self-medicated with alcohol.*



constant back pain with degenerative disc disease, PTSD, and suffers from two Traumatic Brain Injuries (TBI) that cause vertigo. Despite his injuries, Tim was active in the Reserves for three years and his Captain reported he was a highly qualified Marine. His discharge was Involuntary Honorable (Medical). During his service, he received numerous citations and medals, including the National Defense Service Medal and Iraq Campaign Medal.

The father of four children, Tim has a 90% VA Disability rating. With his ongoing physical pain and his untreated mental health ailments, Tim self-medicated with alcohol. One day, he stopped taking his medications and drank beer which triggered a violent reaction. He was arrested for resisting arrest and domestic violence. His wife recounted that, "Our 10 year old daughter came upstairs and said Daddy was talking funny. I came down and

saw he was drinking. I told him that was enough and it was time to go to bed. He started rambling about his life. I told him that he just needed to come upstairs and go to bed. He flipped a switch and came after me. He had me bear-hugged in the kitchen corner when I screamed for our oldest daughter, who is 12. By the time she came down, I had gotten enough space to get around him and go upstairs where I called the police.” When the police entered the house, they found him asleep on the couch and when awoken, he reacted aggressively and instinctively with a trained military response.

The VDP assisted Sgt. Polaski's public defender in submitting a Mitigation Memorandum to the court,

advocating for leniency and a treatment approach to enable him to heal and recover from his PTSD and TBI. The Judge placed him on a one-year Interim Supervision Probation, which if successfully completed, will result in a conditional discharge with no further probation. Concurrently, Tim is in an inpatient PTSD VA treatment program, a VA substance abuse program, and a domestic violence therapy program, and is fully compliant with his probation terms. **He is being held accountable while still receiving the multi-faceted treatment and therapy that he needs to heal both his and his family's wounds. The VDP mitigation legal advocacy succeeded in giving Tim a second chance, putting him on the road to recovery and his family on the road to restoration.**

## VDP Attains Court-Ordered Therapeutic Approach with Treatment for Marine with PTSD

**U.S. Marine Sgt. Joseph Gallo:** Sergeant Gallo served in both the Marines and the Army for a total of ten years. In 2004, as a soldier, he deployed to Iraq. For a year he was tasked with leading a twelve man Quick Reaction Force to provide security to Iraq convoy operations. In one of his first “outside the wire” missions, he led a security operation to recover a U.S. Army vehicle that had been blown up by a suicide bomber outside of Baghdad. Walking through strewn body parts was an indelible image for Joe. Two months later, he had to open fire on a car full of people to thwart their aggressive and potentially dangerous approach towards a military convoy. He suffered guilt over this incident, since due to tactical and security operations, he could not offer aid to the people in the car and never learned of their fate. In another incident, two dead Iraqi “body bombs” were thrown from a car. Joe found that the gutted bodies had explosives placed internally, requiring a bomb disposal robot to disarm them.

On the deployment, Sgt. Gallo spent over 250 days “outside the wire” beyond the security and safety of an American



base, exposed to life-threatening danger daily. When he returned home in 2005, the military at that time lacked a full understanding of the mental effects of combat. Thus, Joe's PTSD was not diagnosed and he turned to illegal drugs to self-medicate. Within a few months, he tested positive for cocaine and was reduced in rank and discharged from the Army under “Other than Honorable Conditions.” He was devastated, as his identity and sense of worth was wrapped up in his status as a soldier and his military dedication. His marriage rapidly disintegrated, resulting in a divorce,

and he faced financial hardships. For eight years, he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

... he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

With support from his fiancé, he turned over a new leaf and stopped taking drugs, marrying and then regaining full custody of his son from his previous



marriage. On the day of his arrest for drug possession, he had just lost his job and was in relapse and using drugs. After his arrest, he immediately enrolled in the VA program for substance abuse treatment. He was clean for over a year until he came upon a car accident where the driver's head was decapitated, triggering memories of his Iraq war horrors. Within hours, he again relapsed and then sought help from the VA. Throughout the last ten plus years, his PTSD had been undiagnosed.

The VDP assisted Joe's public defender and submitted a Mitigation letter to the Court stating, "it is in the best interest

of justice that he be spared further incarceration and be afforded the opportunity to heal his battle-borne wounds." The VDP said, "While he struggles with some extremely powerful memories of past events that are at the distal end of human experience, he is dedicated to his wife and son and realizes how much he has to gain from continuing treatment." **The court undertook a therapeutic approach and sentenced Joe to VA PTSD and substance abuse treatment for 18 months, allowing him to heal and return to his family to once again be a productive member of society.**



\*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.



## The VDP Assists Public Defenders in Fulfilling the U.S. Supreme Court Unanimous Ruling That Defense Counsel Must Investigate a Veteran Defendant's Military Service & Battle-Borne Mental Health Ailments

The VDP is helping public defenders to fulfill their constitutional obligation to investigate their client's military service, and any related mental health ailments that may have contributed to their offense, and seek mitigation. In *Porter v. McCollum*, 558 U.S. 30 (2009), **the United States Supreme Court ruled unanimously that public defenders must adequately investigate their client's military background to include battle-borne mental health illness, such as PTSD, and reasonably present such evidence in mitigation.** Although the defendant was a decorated Korean War veteran, his court-appointed counsel neither investigated nor presented evidence of his military service to the jury, and the Court reasoned that this type of evidence might have swayed the jury. Porter's defense counsel was found ineffective in this *per curiam* decision.

The Supreme Court emphasized:

*"Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did. Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter."* (*Porter v. McCollum*, 558 U.S. 30, 130 S.Ct. 447 (2009).



***Helping Those Who Defended Us:***

Deanne Quinn Miller, VDP Program Coordinator, assists a veteran with expert referrals and guidance on VA treatment and therapy programs in August 2015 at the Batavia office.

## VDP Public Defender Office Assistance Site Visits

Office site visits were conducted with Chief Defenders and their staff at eleven county public defense programs to train, educate and advise on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting veteran clients with service programs.

- Columbia County Public Defender Office**, Hudson, NY, 05/08/14.
- Cattaraugus County Public Defender Office**, Olean, NY, 06/30/14.
- Livingston County Public Defender Office**, Geneseo, NY, 10/31/14.
- Steuben County Public Defender Office**, Bath, NY, 10/31/14.
- Orleans County Public Defender Office**, Albion, NY, 11/7/14.
- Genesee County Public Defender Office**, Batavia, NY, 12/10/14.
- Rockland County Public Defender Office**, New City, NY, 7/16/15.
- St. Lawrence County Public Defender Office**, Canton, NY, 7/14/15.
- Kings County, Brooklyn Defender Services Office**, NY, 7/30/15.
- Niagara County Public Defender Office**, Lockport, NY, 8/17/15.
- Westchester County Legal Aid Society Office**, White Plains, NY, 9/17/15.

# VDP Legal Trainings

The VDP provided extensive training to over 600 public defenders, legal aid society attorneys and assigned counsel in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, *"This was the best training I have ever attended."*

**Cattaraugus County** CLE, Olean, NY, 8/15/14, Best Practices for Representation of Veterans

**Monroe County** CLE, Rochester, NY, 8/29/14, Best Practices for Representation of Veterans

**Albany County** CLE, Albany, NY, Statewide Training, 10/17/14, Representing Veterans in NY Courts

**National Association for Public Defense Webinar** CLE, 2/26/15, Defending Veterans in Criminal Court

**29th Annual Metropolitan Trainer** CLE, New York City, NY, 3/14/15, Representing the Veteran From Arrest Through Disposition

**Ontario County** CLE, Canandaigua, NY, 3/20/15, Representation of the Veteran Client: Understanding the Issues & Tips for Effective Advocacy

**Oneida County** CLE, Utica, NY, 4/25/15, Using your Veteran Client's Military Experience, Training and Culture in their Defense

**Syracuse University College of Law** CLE, Syracuse, NY, 5/4/15, Defending the Veteran Client

**NAACP Legal Defense Fund 36th Annual Capital Punishment Training Conference**, Warrenton, VA, 7/9/15, Defending Veterans in Capital Cases

**7th and 8th Judicial Districts, Batavia**, NY, 8/13/15 & 8/14/15, Veterans Defense Program Point Person Training

**Rockland County** CLE, New City, 9/17/15, Defending the Veteran Client

**Westchester County** CLE, White Plains, NY, 9/18/15, Best Practices for Representation of Veterans

**5th & 6th Judicial Districts, Syracuse**, NY, 10/15/15 & 10/16/15, VDP Point Person Training

**2nd, 10th & 11th Judicial Districts, Hempstead**, NY, 11/12/15 & 11/13/15 VDP Point Person Training



***Best Practices for Representation of Veterans:***

(L-R) VDP Legal Director Art Cody and VDP Director Gary Horton speaking at September 2015 training in Westchester County.



# Evaluation Comments on VDP Trainings

*"Outstanding! Thank you!"*

*"Excellent panel of very moving, informative and wonderful speakers. Keep up the good work."*

*"The best Continuing Legal Education (CLE) I have attended. Congrats!"*

*"Excellent direct-experience presentations."*

*"Very informative and heartfelt presentations. An excellent CLE. Thank you."*

*"Great presentations and introduction to representing veterans."*

*"The U.S. Army veteran was excellent and his presentation was personal which made it incredibly interesting and helpful."*

*"Great training – thank you!! It definitely opened my eyes to many issues to consider."*

*"Great to hear more about veteran's experiences, military culture and how it relates to cases."*

*"Such an important topic for such a marginalized and misunderstood population."*

*"Talented and excellent speakers."*

*"Very informative and on point presentations with great resources."*

*"Great presenters with insightful and helpful points."*



## Statewide Training Features National Experts

The Veterans Defense Program's Best-Practice Litigation Training for Lawyers Representing Veterans on October 17, 2014 featured national experts on defending veterans in criminal court and the treatment of veterans with PTSD and TBI. (L-R): Jonathan E. Gradess, NYSDA Executive Director; Attorney Brock D. Hunter, a nationally-recognized expert and author of the seminal [The Attorney's Guide to Defending Veterans in Criminal Court](#); Ed Tick, Ph.D, Executive Director of the international organization Soldier's Heart, and author of the nationally acclaimed book, [War & The Soul: Healing Our Nation's Veterans from PTSD](#); Art Cody, VDP Legal Director, and Gary Horton, VDP Director.



# VDP Outreach Presentations

The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

**Bronx Defenders**, New York City, 5/9/14.  
**Seventh Judicial District Chief Defenders Meeting**, Canandaigua, 5/9/14.  
**Ontario County Veterans Court Planning Committee**, Canandaigua, 5/15/14.  
**Veterans Outreach Center**, Rochester, 5/17/14.  
**Clearpath for Veterans**, Syracuse, 6/13/14.  
**Marine Corps League**, Albany, 6/28/14.  
**American Legion**, Department of NYS, Statewide Convention, Albany, 7/17/14.  
**Center for Court Innovation**, Syracuse, 8/1/14.  
**Genesee County Bar Association**, Batavia, 10/1/14.  
**Partners In Restorative Initiatives**, Rochester, 11/10/14.  
**Chief Defender Association**, Albany, 12/15/14.  
**Judge Robert Russell**, Buffalo City Veterans Treatment Court, Buffalo, 1/27/15.  
**National Alliance on Mental Illness**, Albany, 1/12/15.  
**Syracuse Law School Veterans Clinic**, Syracuse, 1/29/15.  
**Dr. Cory Crane, Strength at Home Program**, Rochester, 2/20/15.  
**VA Committee on Women's Programs**, VA Western NY Medical Center, Buffalo, 3/11/15.  
**Hofstra Law School**, Hempstead, 4/23/15.  
**East End Vets Long Island**, East End, NY, 4/25/15.  
**Groveland Correctional Facility, Veterans Program**, Groveland, 4/29/15  
**Veterans of Foreign Wars**, Albany, 5/2/15.  
**New York State Council of Veterans Organizations**, Albany, 5/13/15.  
**One-Stop Veterans Center of WNY**, Buffalo, 6/26/15.  
**Brooklyn Defender Services**, 8/12/15  
**Orleans County Magistrates Association**, Albion, 9/9/15.  
**Harlem Vet Center**, Harlem, 9/11/15.  
**NY City Council Veterans' Affairs Committee Chairman Eric Ulrich**, NYC, 9/25/15.



### **ABC News Journalist Bob Woodruff Meets with VDP Staff**

Bob Woodruff, former co-anchor of “ABC World News Tonight,” was severely injured with Traumatic Brain Injury from a roadside bomb while reporting in Baghdad, Iraq. After his recovery, he and his wife wrote a book, *In an Instant: A Family’s Journey of Love and Healing*, and created the Bob Woodruff Family Foundation in support of veteran service programs. (L–R) VDP Legal Director Art Cody; Bob Woodruff; and VDP Director Gary Horton meet at the Mental Health Foundation August 2014 event in Saratoga Springs, NY.



### **Former First Lady Matilda Cuomo Meets with VDP Staff**

(L– R) VDP Legal Director Art Cody; Former First Lady Matilda Cuomo, wife of former NYS Governor Mario Cuomo; VDP Director Gary Horton; and VDP Program Coordinator Deanne Quinn Miller meet at the Mental Health Foundation 2014 event supporting treatment for mentally-impaired veterans.

# Veterans Defense Program Supporters



## Supporting Treatment for Veterans

Robert Porter speaks in support of the VDP's treatment-oriented approach for PTSD veterans at an Albany 2015 news event. (L-R: John Lewis, VFW; Robert Porter, Marine Corps League; Linda McKinnis, Disabled American Veterans; and Steven Cippitelli, VFW.)

The Veterans Defense Program is strongly supported by over 30 veteran organizations, including the American Legion, American Merchant Marine Veterans, AMVETS, Black Veterans for Social Justice, Clear Path for Veterans, Disabled American Veterans, Jewish War Veterans, Harlem Vet Center, Marine Corps League, Military Order of the Purple Heart, New York State Council of Veterans Organizations, PEF Veterans, Veterans of Foreign Wars, Veterans Outreach Center and WNY One-Stop Veterans Center.



## Supporting Justice-Involved Veterans

VDP Legal Director Art Cody speaks at a 2014 Albany, NY news event in support of assisting justice-involved veterans with mental health ailments.



# Veterans Defense Program Full-Time Staff



***Gary A. Horton is Director of the Veterans Defense Program.***

A graduate of Hofstra University School of Law, Horton's practice has centered on public defense for more than thirty years, and he was Genesee County Public Defender for twenty years, before becoming the VDP Director. Horton is the recipient of the NYSBA Criminal Justice Section David S. Michaels Award (2006), the New York State Defenders Association Wilfred R. O'Connor Award (2011), United States District Court for the Western District of New York Special Service Award (2005), and a Friend of the Mental Health Association of NY (2015). Horton is a founding member and past President of the Genesee Veterans Support Network.



***Captain Art C. Cody, USN (Retired) is Legal Director of the Veterans Defense Program.***

A graduate of West Point, Cody has a Master's Degree from the University of Southern California and graduated magna cum laude from Notre Dame Law School. Cody first served as a U.S. Army helicopter pilot, followed by similar service in the Navy Reserve. Most recently, he was mobilized for Operation Enduring Freedom in 2011, serving for one year at the United States Embassy in Kabul, Afghanistan as Staff Director of the Interagency Rule of Law Section. For his Afghan service, he received the Bronze Star Medal and the State Department Meritorious Service Award. He retired from the Navy in 2012 after 30 years of service. As a civilian lawyer, he has represented criminal defendants for over 15 years. He is a recipient of the Thurgood Marshall Award for Capital Representation from the New York City Bar Association.



***Deanne Quinn Miller is the Program Coordinator of the Veterans Defense Program.***

Miller was previously the Executive Director of Genesee Veterans Support Network in Genesee County. She has extensive knowledge of veteran issues, VA health and education benefits, as well as the systems of the VA and Department of Defense, to assist in collecting pertinent client military history information. She is also a spokesperson and Director of the Forgotten Victims of Attica and a cum laude graduate of the University of New York at Buffalo.

**For information and assistance, contact the Veterans Defense Program.**

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**[www.nysda.org](http://www.nysda.org)**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: CRIMINAL TERM: PART K8

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Indictment No.  
1903-13

PETRE IVAN,

Defendant.

-----X

SUPREME COURTHOUSE  
125-01 Queens Boulevard  
Kew Gardens, New York  
September 24, 2015

B E F O R E : HONORABLE LESLIE LEACH,

J U S T I C E

A P P E A R A N C E S :

FOR THE PEOPLE:

THE HONORABLE RICHARD BROWN, ESQ.  
DISTRICT ATTORNEY, QUEENS COUNTY

BY: AARON DIAZ, ESQ.

DOUGLAS KNIGHT, ESQ.

FRANCESCO CATARISANO, ESQ.

ASSISTANT DISTRICT ATTORNEYS

FOR THE DEFENDANT:

GOLDMAN & ASSOCIATES  
100 RING ROAD WEST, SUITE 209  
GARDEN CITY, NEW YORK 11530

BY: JAN D. GOLDMAN, ESQ.

FOR THE DEFENDANT:

NYS DEFENDERS ASSOCIATION  
VETERANS DEFENSE PROGRAM

BY: ARTHUR CODY, ESQ.

JENNIFER ROSENBLATT  
Senior Court Reporter

## Proceedings

1 THE CLERK: Petre Ivan, 1903 of 2013. Appearances  
2 for the record.

3 MR. DIAZ: Aaron Diaz for the People.

4 MR. GOLDMAN: Jan Goldman, J-A-N, G-O-L-D-M-A-N,  
5 100 Ring Road West, Garden City, New York.

6 MR. CODY: Art Cody, Veterans Defense Program, New  
7 York State Defenders Association for the defendant.

8 THE COURT: Good, all right. We returned to this  
9 matter to see how we were going to proceed. Mr. Diaz, I  
10 think the ball is in your court.

11 MR. DIAZ: Yes, your Honor. We have come up with  
12 a proposed plea. If the defendant pleads to the top count  
13 of Burglary in the First Degree in addition to pleaing to  
14 A-misdemeanor --

15 THE COURT: Do the parties want to approach off  
16 the record?

17 MR. GOLDMAN: Sure.

18 (Whereupon, an off the record discussion was held)

19 MR. CATARISANO: For the record, Assistant  
20 District Attorney, Francesco Catarisano on behalf of the  
21 People. Last name is C-A-T-A-R-I-S-A-N-O. First name  
22 F-R-A-N-C-E-S-C-O. Good morning, Judge.

23 MR. KNIGHT: Doug Knight for the People.

24 THE COURT: Do you mind if we just chat? I can  
25 come down from the bench.



## Proceedings

1 MR. CATARISANO: We can have a chat or put  
2 everything from the beginning on the record because --

3 THE COURT: First thing, I want --

4 MR. CATARISANO: What I am about to say is, I  
5 don't -- it's rather presumptuous. I don't believe, I want  
6 to be -- it's not negotiable what I am about to offer.

7 THE COURT: The second part too, is that I haven't  
8 been looking for you so soon.

9 MR. CATARISANO: Here I am.

10 THE COURT: I chatted with you maybe three weeks  
11 ago.

12 MR. CATARISANO: Here I am. I am back.

13 THE COURT: I thought you were going to call me.

14 MR. CATARISANO: I thought I would just show up.  
15 I can put everything on the record of what we are thinking  
16 about.

17 MR. KNIGHT: On behalf of the District Attorney's  
18 Office, Doug Knight. Good morning, your Honor.

19 THE COURT: Good morning. Quickly off the record.

20 (Whereupon, an off the record discussion was held)

21 (open court)

22 THE COURT: On the record. The People are  
23 extending an offer in this matter?

24 MR. CATARISANO: Yes, we are, Judge. I want to  
25 note that a lot of this has to do with the good work that

## Proceedings

1 Mr. Knight has done and bringing me up-to-date on everything  
2 with this defendant. I was made aware by both Mr. Knight  
3 and Mr. Diaz as to what the proposals were with respect to  
4 the possible plea on the last date where the People would  
5 come off the top count and the defendant would be receiving  
6 an offer of three and a half years. I believe that is what  
7 we were talking about when he faces five.

8 And based on everything that Mr. Knight filled me  
9 in on, I felt that that disposition would be rather  
10 ineffectual and not proper given what it is that this case  
11 is all about and what the defendant is all about.

12 Mr. Knight was then good enough to fill me in on the  
13 entirety of the defendant's background and, you know, the  
14 one thing that is key in this is the fact we spoke -- first  
15 spoke about a disposition in this case, which was a couple  
16 of years ago. There was -- everything that the defendant  
17 has done in between then and now was obviously missing, we  
18 did not know. So when I was filled in on the fact that the  
19 defendant has attended counseling on a weekly basis for the  
20 last two years, that he is, in fact, employed and  
21 apparently, you know, doing much better -- I was also  
22 apprised of the fact that if he were to be sentenced on a  
23 felony plea, that he would lose all of his veterans benefits  
24 and obviously he is in need of assistance.

25 I felt that all of that was not right and that if

## Proceedings

1 we were going to do something from the viewpoint of a proper  
2 disposition in this case, then what we really need from the  
3 defendant is the opportunity for him to get 100 percent  
4 better.

5 So here is my proposal. My proposal is this, he  
6 take a plea to the top count on the indictment and to the  
7 misdemeanor that's on the docket. My proposal would then be  
8 the case be adjourned and that he would be monitored for a  
9 period of no less than two years, and at which time they  
10 review the case and see what it is that is happening with  
11 him. During that period of time he would be responsible  
12 for -- to stay within that program and that includes, of  
13 course, the one he is undergoing now is good enough,  
14 according to Mr. Knight. Then we would say continue that  
15 program and Mr. Knight would monitor him during that time.

16 And anything additional that needs to be done,  
17 then Mr. Knight will determine that. I think he will put  
18 forth the same way I put it to Mr. Knight, that basically we  
19 would require this defendant to look at Mr. Knight as being  
20 his mom and dad rolled into one. He will be responsible  
21 for, right, for keeping him appraised of everything. And at  
22 the end of the two years, right, and even perhaps we decide  
23 there should be a periodic assessment for the Court, we can  
24 do that, too. But it has to be a minimum of two years, at  
25 which point then determine as to whether or not there should

## Proceedings

1 be any further monitoring of the defendant. If we decide  
2 that there should be no further monitoring, then the felony  
3 conviction would disappear. The felony plea would disappear  
4 and he would be allowed to continue as an A misdemeanor  
5 conviction with this, with the three years' probation. If  
6 he does not satisfy all of the requirements, then he is  
7 going to face the penalty of, not the three and a half  
8 years, not the five years, but a minimum of seven years.  
9 That's the hammer that I want to hold over his head.

10 I want to make that clear, that seven-year hammer  
11 is for him not following the -- attending whatever program  
12 it is that's put together with the approval of the Court.  
13 It has nothing to do with additional crimes in the way that  
14 he breaks the program. By committing an additional crime, I  
15 want him to know right now that the District Attorney's  
16 Office is going to recommend the full 25 years that he faces  
17 on the violent B felony if he commits another crime. It  
18 will be the demonstration on his part that he's not willing  
19 to be an ordinary, good citizen.

20 That's my proposal, Judge. As I said, it is not  
21 negotiable in any way, shape or form. That's the choice;  
22 that he either takes that program or they go to trial. And  
23 I hope that's fair enough.

24 THE COURT: I am trying to get a little bit on the  
25 B felony, if he were to commit another crime, seven years

## Proceedings

1 jail?

2 MR. CATARISANO: If he commits another crime,  
3 Judge, I want everybody to know, we will recommend the full  
4 25 years.

5 THE COURT: Right. If he -- what if he doesn't  
6 complete the program?

7 MR. CATARISANO: Then it's the seven years.

8 THE COURT: It's an A-misdemeanor crime. Are we  
9 making any distinction here?

10 MR. CATARISANO: I don't remember what the  
11 misdemeanor is. You mean if he committed a misdemeanor  
12 crime?

13 THE COURT: Right.

14 MR. CATARISANO: You know what, Judge, I would  
15 rather say let him stay crime free. Let him stay crime  
16 free. Stay away from anything that's going to involve some  
17 kind of, you know, crime being committed, right. I think if  
18 we start playing games on what is what, I am sorry, I  
19 shouldn't say games. If we start to make distinctions  
20 between one crime versus another, I would not want any  
21 reader of this record to ever think that we find some things  
22 more acceptable than others. I think it should just be  
23 crime free. The program, do the right thing, and he will be  
24 able to get on with his life in the best way that he can and  
25 he would still have the full assistance of the Federal

## Proceedings

1 Government as a veteran, which I think he obviously needs.

2 THE COURT: Right. Might I ask, what do they do  
3 in the Veterans Court? What is the benefit of being in the  
4 Veterans Court? You have come up with this wonderful offer  
5 given -- what are we looking at, for my edification?

6 MR. KNIGHT: This type of case would be, the  
7 reason he -- to be in Veterans Court based on the violent  
8 nature of the offense, he would not be eligible. They  
9 would -- participating in Veterans Court, the only benefit  
10 is he would be exposed to a very cultured environment, in  
11 that they have the federal representatives of the various  
12 branches of government. And there is also a veterans mentor  
13 that is associated with Veterans Treatment Court. In this  
14 particular case, because of the uniqueness of the facts and  
15 circumstances, we believe --

16 THE COURT: Seriousness of the crime?

17 MR. KNIGHT: Seriousness of the crime. In  
18 addition, early on, back in 2013, when this case was first  
19 presented to me, that the defendant was evaluated by the  
20 Veterans Treatment Court staff and he was determined  
21 ineligible because of the violent nature of the offense. So  
22 at this particular time we believe that, clinically  
23 speaking, the treatment plan will be very similar to that of  
24 something that Veterans Treatment Court and the monitoring  
25 with the appropriate, given the fact that I myself, with my

## Proceedings

1 colleague, Kathleen Callahan, will be case managing the  
2 defendant and we have the resources and the relations with  
3 the VA that we can effectively do the same thing before your  
4 Honor that we would be able to do in Veterans Treatment  
5 Court.

6 THE COURT: So Kathleen Callahan --

7 MR. CODY: If I may speak to that. First of all,  
8 I appreciate the offer, certainly a far step from where we  
9 were, let me say on the record. Secondly, I -- one of the  
10 significant differences between Veterans Court and treatment  
11 Court or any other court, you have Pointed it out, is the  
12 presence of the Veterans monitor, specifically for a  
13 defendant like this who has been in the military, to be  
14 monitored by the Senior Non-commissioned Officers, retired  
15 or guardsman, they serve as a role model for this veteran.

16 So the effect of not having that mentor, that  
17 specific military mentor who has been through many  
18 experiences, certainly on the military side, that a veteran  
19 has been through, that is -- again, I do appreciate the  
20 offer. Let me make that clear. But not having that mentor  
21 that you would have in Veterans Court I think is key. The  
22 key factor of success is the veterans mentor.

23 THE COURT: In those other Veterans Courts, do  
24 they -- veterans, do they take people with violent felonies?

25 MR. CODY: Your Honor, in terms of roughly 22

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1 Veterans Courts in the State of New York, and they are  
2 across the board on what they will take and what they will  
3 not take. There are Veterans Courts that take some. Others  
4 only take misdemeanors. Some take felonies. There is some  
5 that take violent felonies. We know of Courts that have  
6 taken weapon charges. So to answer your question, certainly  
7 there are some Veterans Courts that do take what you have  
8 similar to that.

9 THE COURT: This Court here in Queens County does  
10 not. Is there any way -- Mr. Knight, you believe that your  
11 monitoring could somehow or another encompass a component  
12 that would afford for and allow for that military mentor?

13 MR. KNIGHT: Absolutely. I will reach out to the  
14 mentor liason, Mr. Patrick Clayton, in the Veterans  
15 Treatment Court. I suspect that we will have no problem in  
16 getting a Veterans mentor either affiliated with the  
17 Veterans Treatment Court here in Queens County or I am aware  
18 of other Veterans Organizations that provide mentor service  
19 and I will reach out to them. And I'm sure that they would  
20 very happily assist this defendant in being a phone mentor  
21 and, if necessary, come into Court with him in providing him  
22 the necessary support that he may or may not need.

23 One of the reasons why we are offering this  
24 disposition is because the defendant, since the day of the  
25 arrest, has objectively demonstrated a willingness to access



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1 services and he has done it without the benefit of a  
2 Veterans' mentor. So taking the totality of his clinical  
3 history into consideration, we believe that this is the  
4 appropriate disposition. And not only appropriate  
5 disposition, but the appropriate disposition before your  
6 Honor and not having this case go to Veterans Treatment  
7 Court.

8 THE COURT: Okay.

9 MR. KNIGHT: In addition, just to, as a side,  
10 typically people that participate in Veterans Treatment  
11 Court will participate for approximately one year, but  
12 because of the severity and facts and circumstances of this  
13 case, as Mr. Catarisano indicated, we are requiring this  
14 defendant to participate in treatment and -- under court  
15 supervision for a period of time of two years. In two years  
16 he would not meet the criteria of Veterans Treatment Court  
17 and we certainly don't want to set a precedent in that  
18 forum.

19 THE COURT: Agreed.

20 MR. CODY: May I ask a question if I could?

21 THE COURT: Sure.

22 MR. CODY: It would be a two-year period during  
23 which Mr. Ivan would need to continue to attend therapy  
24 sessions? Right now he is going to Dr. Steamcamp, continue  
25 to work with Mr. Steamcamp over the next two years.

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1 THE DEFENDANT: However long it takes.

2 THE COURT: I might, I might say for the record,  
3 given his treatment progress, there may be a point in time  
4 somewhere down the road where the psychiatrist or person  
5 with whom he is working might suggest some change in  
6 modality. I don't know if it would be relaxed, whatever it  
7 is, depends, it's -- we can't say you have to stay with this  
8 particular person with the same frequency that he is working  
9 with at now, but be compliant with the recommendations that  
10 come down that are approved by Doug Knight and the District  
11 Attorney's Office. I think that would work for me.

12 MR. KNIGHT: That is accurate. I think that's  
13 what Mr. Catarisano was leading to.

14 THE COURT: Stay in treatment, what is prescribed  
15 by the People who know far better than us and, of course,  
16 with the District Attorney's approval. So it doesn't have  
17 to be this particular individual with this particular time  
18 frame. What is best for him in his, I don't know if you  
19 call it recovery or --

20 MR. CODY: Reintegration.

21 THE COURT: Do you have more questions you wish to  
22 ask or do you wish to take more -- to chat about it?

23 MR. CODY: I have a couple, then if we can  
24 gather --

25 THE COURT: You want to huddle up? Let me say, to

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1       some point I had in the back of my mind considered a Clayton  
2       motion and --

3               MR. CODY: As have I, your Honor.

4               THE COURT: But let me tell you this, with the  
5       proposal that has been made, it addresses the complete  
6       insecurity I had with the Clayton motion. And it also  
7       addresses the interest of the People of the State of New  
8       York. That's what the District Attorney is here for, to  
9       represent the People here in Queens County. A Clayton  
10      motion doesn't address the problems; that the offer that's  
11      been put on the table today addresses some. That's a  
12      completely different spin on what was going on in the back  
13      of my mind. I am letting you know that I have a --  
14      dismissed that as a reasonable alternative because of the  
15      other alternative that's been proposed. So I don't know how  
16      much time you need but --

17              MR. CODY: Couple of more questions. We have the  
18      two-year period or perhaps, last question, the way we  
19      operationalize that is periodic letters from Dr. Steinkampf,  
20      (phonetic), whoever the therapist is, that yes, he is  
21      complying?

22              MR. KNIGHT: Let me give you an overview of how I  
23      foresee the whole thing happening.

24              THE COURT: Would you like to sit down and hash  
25      out a page and a half agreement with the details? You know,

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1 we can do this today. We can do it Monday. I think --

2 MR. CATARISANO: You know what, Judge, one thing  
3 that scares me about that, if I might, is now that's what is  
4 going to happen, we as lawyers will get bogged down with  
5 the details as we always do, absolutely, pardon the  
6 expression, and screw up what could be a good situation for  
7 the people involved.

8 THE COURT: I think I am -- I share your bit of  
9 pessimism. I am confident given the goal is so common among  
10 the so-called adversaries. I think it's just a couple of  
11 things that need to be worked out, very simply worked out.  
12 You know, whether he can have a mentor. It's not -- I don't  
13 think it's any rocket science that we will screw up here.

14 MR. CODY: Sure.

15 MR. GOLDMAN: While we have everybody here, I  
16 would like to stay to finalize it. We have time.

17 THE COURT: I have to leave at 12:30. If you want  
18 to resume at 2:30, that would be good. However you want to  
19 do it.

20 MR. GOLDMAN: Can we finish a little bit more  
21 and --

22 MR. KNIGHT: If I may kind of give defense counsel  
23 a brief overview of how I foresee this thing happening.

24 THE COURT: Can we go off the record?

25 MR. KNIGHT: I prefer to do it on the record.

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1       It's -- this way it's clear. I will -- obviously your  
2       client will sign a HIPAA release. I will then communicate  
3       with the VA and we will work collaboratively to make sure  
4       that his clinical needs are met. If, in fact, there are  
5       some clinical concerns, I will present them to all the  
6       parties involved. And I anticipate coming or requesting of  
7       the Court that we come back bi-monthly for periodic Court  
8       updates during the pendency of a two-year period during the  
9       deferred sentence period.

10               In the event that he is not complaint between  
11       adjournments, obviously everybody will be notified and we  
12       will come back before Judge Leach and present the findings.  
13       I suspect, based upon his treatment history, we are not  
14       going to go down any pitfalls or have any issues. So I  
15       suspect that everything will be seamless in the -- to the  
16       extent that I will communicate with this clinician at the  
17       VA. We will work collaboratively. I will also require the  
18       defendant to come see me periodically to make sure that he  
19       is treatment compliant. Upon successful completion, we will  
20       make a recommendation that the felony case before the Court  
21       be dismissed and sealed under a misdemeanor. He will get a  
22       sentence to three year's probation.

23               I don't think this will be a very difficult thing  
24       for him to satisfy, assuming he continues to do what he has  
25       been doing.

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1           MR. CODY: We should put it -- regardless of how  
2           it does seem very straight forward, we should put it down on  
3           paper.

4           MR. GOLDMAN: It's on the record.

5           MR. CODY: The only thing, I would add one thing  
6           that does concern me somewhat is a misdemeanor violation,  
7           you know, the 25 year period. There is three -- he has  
8           three years probation after that?

9           THE COURT: Well, exposure on a three-year  
10          probationary period would be one year jail. I will dismiss  
11          the felony after two and sentence him to three year's  
12          probation. The only exposure is one year jail time.

13          MR. CODY: Twenty-five years goes away at the end  
14          of two years?

15          MR. KNIGHT: Yes.

16          MR. CATARISANO: You know, Judge, I just thought,  
17          because I do see some hesitation, at least on the part of  
18          one counsel, really this way, you know, I came up with this  
19          on my own. It wasn't a request. That's the way I saw fit  
20          that we should proceed after speaking with Mr. Knight. That  
21          should tell you what I see the goal to be. I want him to  
22          get better. I want him to be a contributing member to  
23          society. Believe me, I have my questions, you know, about  
24          his present situation with certain things, right. And it  
25          will be up to him. I will not be looking, if you are

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1 thinking that this is coming across as a way for me to make  
2 him violate and get the seven years, for me it's very  
3 simple. If that's what I was after, I would look at my  
4 Assistant DA and say pick a jury because I have no doubt as  
5 to what the outcome of this case would be in front of a  
6 jury.

7 If I wanted him to be hurt, I would force a trial.  
8 I am not forcing a trial because I want him to get better.  
9 I understood what -- the Court's concerns were thoroughly  
10 explained to me by Mr. Knight. That's why I am putting it  
11 in Mr. Knight's hands. I know how good he is at his job.  
12 So if you're thinking this is some kind of a set up to make  
13 him fail, it is not in any way, shape or form.

14 MR. GOLDMAN: I would like to say it is, since I  
15 have been living with this case for two and a half years,  
16 two and a half years, I know him very well. He had a lot of  
17 issues in the beginning. Some, well, I would say most from  
18 where he got post-traumatic stress disorder. He was labeled  
19 100 percent disabled. Not 80, 90, 100 percent. His wife  
20 came to me and his wife said, I screwed him over big time.  
21 Sorry to say it on the record. That's what she said. She  
22 said I did things behind his back. I slept with other men.  
23 What he did as far as that night, okay, we are not saying it  
24 wasn't wrong, but his wife came to me.

25 THE COURT: Mr. Goldman, take me where we are



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1 going. Let me know what it is we are doing, talking about.

2 MR. GOLDMAN: I want to say the offer that was  
3 given by the Assistant Bureau Chief is fine, okay. I have  
4 spoken to my client about it. He is going to do whatever he  
5 is told to do. He has been terrific for the last two and a  
6 half years. I can't thank you, him enough, Mr. Knight,  
7 Mr. Diaz and his Assistant, Ms. Callahan, for their --  
8 overextending themselves for what they did today. I have  
9 been in this courthouse for 30 years. I am a little older  
10 than people think. I am an old guy. I am over 60. I work  
11 on a lot of bad cases; murder cases, bank robbery, armed  
12 weapons and they have given me trouble in the beginning and  
13 I fought and I fought, but they have now overextended  
14 themselves.

15 We are grateful, both myself and my client, and he  
16 will do whatever he is told to do and we are not going to be  
17 a problem here and we are interested and want to do this  
18 offer. So we want to iron it out today so it's done so  
19 there is no changing.

20 THE COURT: What does it take to iron it out? I  
21 have to leave at 12:30.

22 MR. GOLDMAN: Just a few minutes to go over the  
23 details. I want to put on the record we are extremely  
24 grateful for that. I wanted to thank you, them, Mr. Knight.  
25 I know he worked very, very hard. I am a pain in the neck,

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1 but when I get a client that I think deserves something, I  
2 go out of my way. I was in the office last night after the  
3 holiday to almost 11:30. I am very grateful for what they  
4 did. I can't appreciate it enough and the chief knows I am  
5 a pain in the neck and we had fights in his office, but you  
6 know what, in the end it all worked out. I am grateful. I  
7 thank the Court. You have been terrific, Judge. I can't  
8 thank you enough.

9 THE COURT: Thank you. Mr. Cody, are you  
10 comfortable?

11 MR. CODY: Yes. The only thing I want to add is  
12 as a veteran and having gone through some of the relatively  
13 same thing as Mr. Ivan has, I do appreciate everything you  
14 did in this case, as well as the District Attorney has done  
15 as well.

16 THE COURT: Okay, two minutes and we will see. In  
17 the meantime, what charge might we be looking at, the top  
18 count and --

19 MR. DIAZ: The assault.

20 THE COURT: Assault in the Third Degree.

21 MR. CATARISANO: With the Court's permission, I  
22 want to leave. I have another appointment to get to. I am  
23 nearby in case you need me.

24 THE COURT: Okay. Did Mr. Catarisano mention an  
25 order of protection in this? Did he?

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1           MR. DIAZ: The order of protection would be  
2           against Steven DeSimone (phonetic) or against -- protection  
3           of Steven DeSimone.

4           THE COURT: In favor of the wife?

5           MR. DIAZ: There hasn't been an order of  
6           protection --

7           MR. GOLDMAN: They reconciled. They're living  
8           together. They're happy as can be. She apologized to him  
9           and he accepted.

10          THE COURT: He needs to be advised, particularly  
11          in these difficult circumstances --

12          MR. GOLDMAN: We are fine with that.

13          THE COURT: He needs to be advised of that  
14          circumstance. Let me say this as well, while entering the  
15          plea, I have some of it to put on the record. There is  
16          nothing wrong with anyone at some point drafting out a  
17          little memorandum agreement that might clarify it and have  
18          it in writing for execution at some later time.

19          MR. KNIGHT: Fair enough.

20          MR. DIAZ: With regards to the -- Justine Ivan, I  
21          feel like a limited order of protection would be  
22          appropriate. A limited order of protection allows contact.  
23          He cannot commit a further crime.

24          THE COURT: Assault, harass --

25          MR. GOLDMAN: It's a refrain from only.

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1 THE COURT: Is that added in or was that part of  
2 Mr. Catarisano's --

3 MR. DIAZ: That's just me thinking. I feel like  
4 there should be a limited order of protection which allows  
5 him contact, allows them to live together. He cannot commit  
6 any further crimes against her.

7 MR. GOLDMAN: For the last two years they have  
8 been living together. There hasn't been any problem. Now  
9 two years later --

10 MR. DIAZ: Part of the whole agreement is he  
11 cannot commit a crime.

12 THE COURT: Off the record.

13 (Whereupon, an off the record discussion was held)

14 (open court)

15 THE COURT: Anything else?

16 MR. GOLDMAN: No, if we can put everything, the  
17 plea on the record, we will be all set.

18 THE COURT: Take a couple of minutes to -- bear  
19 with me. Clerk, we have the waiver of right to appeal.

20 THE CLERK: Raise your right hand. Do you swear  
21 to answer truthfully all questions put to you by the Court?

22 THE DEFENDANT: Yes.

23 THE COURT: Violations with the crime, they --  
24 your offer was going to look for the max under count one, 25  
25 years; correct?

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1 MR. DIAZ: Correct.

2 THE COURT: Right.

3 MR. CODY: They will recommend 25 for any --

4 MR. GOLDMAN: I filled in my name and my client  
5 fully signed the document. The only thing, I don't know  
6 what normally would go in the space here. If you can show  
7 that to the Judge. I don't know the answer. What normally  
8 is put in there? I am not sure.

9 THE COURT: I will state on the record, there is  
10 no need to fill that in. But there are some issues that  
11 survive the waiver. I will mention those.

12 MR. GOLDMAN: Thank you.

13 THE COURT: Good. Before you make your  
14 application, Mr. Goldman, of one thanking the other, I want  
15 to thank you for your hard work on this matter, putting  
16 together these documents that are very persuasive. I want  
17 to thank you, Mr. Ivan, for his conduct before these events,  
18 serving your country, and after these events in trying to  
19 restore yourself and reintegrate. I thank you as well,  
20 Mr. Cody, for your presence and insight. It was very, very  
21 helpful in actually closing the window in this.

22 I, of course, thank you, the District Attorney's  
23 Office. You know, you worked so hard with the case, that we  
24 have -- we had a number of alternative court proceedings  
25 just to make it as accessible as possible. And even on this

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1 matter, a serious matter, took pause to come up with what  
2 all the parties believe is an appropriate outcome. So I  
3 thank you for that. Mr. Catarisano as well.

4 Your application, Mr. Goldman.

5 MR. GOLDMAN: After conversation with my client,  
6 after doing so, with the Court's permission, we would like  
7 now to withdraw the previously entered plea of not guilty  
8 and plea to two different counts with your permission.

9 THE COURT: Correct. You are entering a guilty  
10 plea on Count One, Burglary in the First Degree, and Count  
11 Seven, Assault in the Third Degree.

12 MR. GOLDMAN: They're Penal Law Section 140.30  
13 (2), Penal Law 120.00 (1), if I am correct, your Honor.

14 THE COURT: Yes. The conditional sentence that  
15 was mentioned on the record was offered by the Prosecution.  
16 That was a conditional sentence where Mr. Ivan would engage  
17 in continued treatment, have this matter adjourned for a  
18 period of two years, monitor that agreement by Mr. Knight  
19 and Ms. Callahan together with a military mentor that would  
20 be sought out and wrapped into the monitoring process, to  
21 stay in that program and follow any recommendations for  
22 treatment with the present psychiatrist that's treating him,  
23 as well as continued veterans administration meetings. And  
24 after two years, if he has completed the monitoring and  
25 fulfilled all obligations, treatment obligations, the People

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1 would dismiss the felony and seek to have imposed a  
2 three-year probation sentence on the remaining Class A  
3 Misdemeanor, the assault count. And should he violate the  
4 terms and conditions of this conditional plea, at that point  
5 if the violations were program related non-criminal  
6 violations, it would be an automatic jail sentence of seven  
7 years on the top count, class D -- class B violent felony,  
8 Burglary in the First Degree.

9 And if the violations were the result of  
10 additional criminal conduct, the Prosecution would be  
11 recommending and seeking the maximum sentence on Count One,  
12 Burglary in the First Degree, a guilty plea, that being a  
13 sentence of 25 years.

14 MR. GOLDMAN: I want to make it clear, you  
15 understand that the top count is a B felony. Second count  
16 will be an A misdemeanor. You understand?

17 THE DEFENDANT: Yes.

18 MR. GOLDMAN: You heard everything that the Judge  
19 said?

20 THE DEFENDANT: Yes.

21 THE COURT: Defense counsel has laid out the  
22 proposed plea here. I've restated it. It has been stated  
23 by the Prosecution. It's on the record and I have to decide  
24 whether or not to accept your plea. I will ask you a  
25 number of questions and evaluate your answers. It may take



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1 a few minutes. If there is anything you don't understand,  
2 feel free to reach out to your attorney for clarification or  
3 ask me for clarification. All right.

4 I understand that this is the plea agreement that  
5 you wish to enter into. Have you discussed this plea  
6 agreement with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had time to discuss it with  
9 Mr. Goldman?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you satisfied with the services of  
12 your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with the input from  
15 Mr. Cody?

16 THE DEFENDANT: Yes.

17 THE COURT: Is your mind clear now?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you taking any drugs or narcotics?

20 THE DEFENDANT: No.

21 THE COURT: Are you taking any medications that  
22 might interfere with your --

23 THE DEFENDANT: No.

24 THE COURT: Are you taking any medications?

25 THE DEFENDANT: I am on Zoloft. It's an

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1           antidepressant.

2                   THE COURT: Does anybody have any issue with that?  
3           Mr. Knight?

4                   MR. KNIGHT: No, your Honor.

5                   THE DEFENDANT: Ambien also for sleep. That's  
6           just for sleep.

7                   THE COURT: Does any of that interfere with your  
8           clarity now?

9                   THE DEFENDANT: No.

10                  THE COURT: Mr. Goldman indicated to me you wish  
11           to enter into this guilty plea to two counts here, count  
12           one, Penal Law Section 140.30 (2) Burglary in the First  
13           Degree, and Count 7, Penal Law 120.00 (1) Assault in the  
14           Third Degree in satisfaction of this indictment before the  
15           Court --

16                  THE DEFENDANT: Yes, your Honor.

17                  THE COURT: -- 1903 of 2013. Is that what you  
18           wish to do, to enter into those two guilty pleas?

19                  THE DEFENDANT: Yes, sir.

20                  THE COURT: Are you entering into the guilty pleas  
21           because on or about February 2, 2013, in the County of  
22           Queens, you knowingly entered or remained unlawfully in the  
23           dwelling of Justine Ivan with intent to commit a crime  
24           therein, and in effecting entry or while in the dwelling or  
25           in the immediate flight therefrom, you, with some other

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1 participant, caused physical injury to Justine Ivan who is  
2 not a participant in the crime?

3 Is that what you wish to enter a guilty plea on  
4 this matter?

5 THE DEFENDANT: Yes.

6 THE COURT: You caused some physical injuries. I  
7 believe it's indicated that the door you broke through  
8 ultimately struck Ms. Ivan and caused some injury; is that  
9 correct?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I also understand you wish to enter  
12 into a guilty plea on the assault in Count 7 and is that  
13 because on the same date, February 2, 2013, in the County of  
14 Queens, with intent to cause physical injury to Justine  
15 Ivan, you did cause such injury to Justine Ivan; is that  
16 correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Those injuries were facial injuries as  
19 a result of the door hitting her in the face; is that  
20 correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Are the People satisfied with that  
23 factual allocution?

24 MR. DIAZ: Yes, your Honor.

25 THE COURT: In pleading guilty, you are pleading

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1 guilty because you are, in fact, guilty of those acts that I  
2 just mentioned in those two crimes?

3 THE DEFENDANT: Yes.

4 THE COURT: Good. And by pleading guilty you  
5 understand you're giving up your right to a trial. When you  
6 give up your right to trial, that means you give up the  
7 right to be represented by a lawyer, the right to cross  
8 examine and confront witnesses called to testify against  
9 you. You give up the right to remain silent at the trial  
10 and not to incriminate yourself. You give up the right to  
11 call witnesses on your own behalf and testify yourself if  
12 you wish. You give up the right to present a defense that  
13 you believe might result in an acquittal of these charges.

14 You give up the right to put the People to the  
15 burden of proving your guilt beyond a reasonable doubt and  
16 convincing 12 citizens of this county unanimously of that  
17 fact. Do you understand you give up these trial rights by  
18 entering the guilty plea; is that correct?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that a guilty plea  
21 is the same as a verdict of guilty rendered by a jury after  
22 trial? Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Ordinarily a defendant retains a right  
25 to appeal even after pleading guilty. In this case,

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1           however, as a condition of the plea agreement that we are  
2           entering into, you have agreed to the waiver of your right  
3           to appeal. I have before me a document that appears to have  
4           your signature.

5                     Is that your signature, Mr. Ivan?

6                     THE DEFENDANT: Yes.

7                     THE COURT: Mr. Goldman, you signed it as well?

8                     MR. GOLDMAN: Yes.

9                     THE COURT: Did you discuss it with your attorney  
10          before signing it?

11                    THE DEFENDANT: Yes.

12                    THE COURT: With respect to that, an appeal is a  
13          process by another court, the Appellate Court. It gives you  
14          the opportunity to challenge what transpired in this Supreme  
15          Court, seeking a modification or change or reversal of the  
16          guilty plea that you have entered into or sentence that  
17          might be imposed. If you can't afford the cost of the  
18          appeal, the State will provide you with the lawyer and pay  
19          those costs for you.

20                    Do you understand that?

21                    THE DEFENDANT: Yes.

22                    THE COURT: By waiving your right to appeal, you  
23          do not entirely give up your right to take appeal if you  
24          were to appeal. By this waiver you give up your right to  
25          appeal. A Court considers most claims of error and whether

## Proceedings

1 the sentence, any sentence that I impose is excessive or  
2 should be modified. As a result of the conviction by this  
3 plea and sentence ultimately imposed is essentially final.  
4 There are some claims which do survive the waiver and they  
5 include, but not limited to, issues such as competency to  
6 stand trial, the right to a speedy trial, the voluntariness  
7 of this plea, the validity of this waiver and legality of  
8 the sentence.

9 But otherwise you give up your right to appeal any  
10 of the other issues. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you willing to give up your right  
13 to appeal?

14 THE DEFENDANT: Yes.

15 THE COURT: Did anybody force you to sign this  
16 waiver?

17 THE DEFENDANT: No.

18 THE COURT: The Court is executing the same as  
19 well. With this plea, this conditional plea, and you do  
20 understand that you had enormous exposure where this matter  
21 should have gone to trial. With this plea, as I previously  
22 stated, you are to continue treatment at least for a period  
23 of two years. And in that treatment it will be monitored by  
24 the District Attorney's Office, Doug Knight, Ms. Callahan,  
25 and at the same time we hope to roll in the assistance and

## Proceedings

1 expertise of the military mentor and that treatment, you  
2 will follow up with the recommendations made by the -- made  
3 with the approval of the District Attorney's Office,  
4 whatever those changes in treatment modality might be; is  
5 that correct?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Should you fulfill your treatment  
8 obligations at the end of two years without any criminal  
9 conduct or meet the steps in connection with the treatment,  
10 the People have agreed to dismiss the felony plea that  
11 you're entering today with the remaining class A misdemeanor  
12 plea. The sentence in return is three years of probation.  
13 That's part of this sentence.

14 You understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: It's a conditional sentence; that if  
17 you don't live up to your obligations with respect to  
18 treatment, and if during the two years engage in some  
19 failure to fulfill the program objectives as approved by the  
20 District Attorney's Office, you will be sentenced  
21 automatically to a one-year jail term.

22 You understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: As well, sir, should your violation of  
25 the conditional plea be not program related, but related to



## Proceedings

1 additional criminal activity, as a result of that, the  
2 Prosecution will violate you on this conditional plea  
3 agreement and seek and recommend to this Court that you be  
4 sentenced to the maximum sentence on the Burglary First  
5 Degree, a B violent felony offense, to a term of 25 years.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Twenty-five years. You understand  
9 that?

10 THE DEFENDANT: Yes, I do understand that.

11 THE COURT: Do you have any questions about the  
12 conditional plea which you are entering into?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: If you were to violate somehow or  
15 another because of your failure to live up to these  
16 obligations, I do sentence you to jail. Upon release from  
17 jail you will be subject to a period of post-release  
18 supervision. And if during that time you were to engage in  
19 any criminal conduct, you could be sent back to prison to  
20 serve out the remainder of that post-release supervision  
21 period behind bars.

22 And as well, if there were any felony convictions  
23 here as a result of some violation on your part, that would  
24 be used for additional punishment, enhanced punishment were  
25 you convicted of another felony crime. In other words, were

## Proceedings

1       you convicted of subsequent violent felony offense, you  
2       would be sentenced as a second violent felony offender.

3               You understand that?

4               THE DEFENDANT: Yes, your Honor. I understand.

5               THE COURT: At the time of sentence, whatever that  
6       sentence might be, there will be mandatory surcharges  
7       imposed, Crime Victim Assistance Fee and possible DNA fee.

8               Are you a citizen?

9               THE DEFENDANT: Yes.

10              THE COURT: Any issue with respect to that,  
11       Mr. Goldman? No, correct?

12              MR. GOLDMAN: No. If I may, just so I cover all  
13       my angles, I am very organized. At the time of sentencing,  
14       with your permission, please, since he is involved in the VA  
15       and everything else with his benefits that he gets, I would  
16       ask the Court for relief from civil disability, which I will  
17       remember to submit on the date of sentence if he is  
18       already -- I don't know if Mr. Diaz or Knight would object.

19              THE COURT: That is something we will all take  
20       under consideration.

21              MR. GOLDMAN: I appreciate that.

22              THE COURT: You're a citizen. You don't have the  
23       issue that might result if this, because of any conviction  
24       here other than the plea and sentence agreement which has  
25       been placed on the record, your waiver and the like.

## Proceedings

1           Has anyone made any other promises, commitments or  
2           representation to you at any time to get you to enter into  
3           this guilty plea?

4           THE DEFENDANT: No.

5           THE COURT: Did anyone threaten you, force you or  
6           pressure you into taking this plea?

7           THE DEFENDANT: No.

8           THE COURT: Has your attorney or have I or anyone  
9           else said anything to you to induce you to enter into this  
10          plea against your will?

11          THE DEFENDANT: No.

12          THE COURT: You're entering into this plea freely,  
13          voluntarily and of your own free choice; correct?

14          THE DEFENDANT: Yes, your Honor.

15          THE COURT: The Court finds -- anything else,  
16          Mr. Diaz, pending you find the allocution adequate?

17          MR. DIAZ: Yes.

18          THE COURT: The Court finds the defendant's plea  
19          has been knowingly and intelligently and voluntarily entered  
20          and, therefore, it's accepted and entered upon the record.

21                 I am entering a guilty plea under count one,  
22          Burglary in the First Degree, a B violent felony offense,  
23          under Penal Law 140.30 (2) and guilty plea under count 7,  
24          Assault in the Third Degree, Penal Law 120.00 (1), a Class A  
25          misdemeanor. Pursuant to the plea entered, you will now

## Proceedings

1 work out the conditional components of your two-year  
2 obligations here and you will be huddling with Mr. Knight  
3 and he will from time to time ask that the matter be put on  
4 the court calendar so the Court can monitor this as well.

5 Do everything you can in your power to avoid any  
6 criminal conduct whatsoever. Heal, integrate, become whole  
7 again as you provided a great service to this country. We  
8 are thankful for that and want this wonderful disposition  
9 for you. All right?

10 THE DEFENDANT: Thank you.

11 THE COURT: Anything else? Pick an adjourn date.  
12 Mr. Diaz.

13 MR. GOLDMAN: First week in November. Is that  
14 okay with Mr. Knight?

15 MR. DIAZ: Yes. Throughout the pendency of the  
16 sentence at least an order of protection in favor of Steven  
17 DeSimone.

18 THE COURT: What are you looking for?

19 MR. DIAZ: Order of protection in favor of Steven  
20 DeSimone.

21 THE COURT: Who is that individual?

22 MR. DIAZ: He was the individual at home with  
23 Justine Ivan.

24 MR. GOLDMAN: He was sleeping with his wife. He  
25 doesn't know him. He doesn't have any contact.

## Proceedings

1                   THE DEFENDANT: I don't plan on ever seeing that  
2 person.

3                   THE COURT: Very quickly. If you don't know him,  
4 you may have a problem staying away from him.

5                   THE DEFENDANT: The only time I seen him --

6                   THE COURT: Was this person a comrad at some  
7 point?

8                   MR. CODY: No, unrelated to his military service.

9                   MR. GOLDMAN: He hasn't seen him in two and a half  
10 years.

11                  MR. DIAZ: There has been an order of protection  
12 in place throughout the pendency of this.

13                  THE COURT: You saw him on that evening whatever  
14 period of time?

15                  THE DEFENDANT: I am okay with that.

16                  THE COURT: Any objection to that?

17                  MR. GOLDMAN: He saw him for about eight seconds.

18                  THE COURT: Can I have the order of protection  
19 executed? Do you have one in the file? What is the  
20 expiration? You said one is pending.

21                  MR. DIAZ: There's one pending now.

22                  THE COURT: Otherwise the plea is acceptable for  
23 being entered and he will abide by and execute whatever  
24 additional orders of protection are necessary and in favor  
25 of that individual just named; right?

## Proceedings

1 MR. GOLDMAN: Yes, your Honor. We are going to  
2 ask for November 6 as a control date to come back again to  
3 see how he is doing, if it's okay with your Honor.

4 MR. KNIGHT: I was respectfully recommending  
5 December 4 or --

6 MR. GOLDMAN: I am okay with that.

7 THE CLERK: It expired 2013.

8 THE COURT: So I am looking. The last one we have  
9 expired in August of 2013.

10 MR. GOLDMAN: For two years we haven't had  
11 anything.

12 THE COURT: Are you withdrawing that request or do  
13 you have one you wish to hand up? I don't see the point at  
14 this point, but if you feel it's necessary, the defense is  
15 willing if you need it, Mr. Diaz.

16 MR. CODY: I am not sure we see the point if he  
17 doesn't know who the guy is.

18 THE COURT: You haven't had one for two years.

19 MR. DIAZ: Yes. They're obviously in agreement  
20 with it. I can get the order of protection up here.

21 THE COURT: No. The order of protection here is  
22 in favor of Justine Ivan. And what was the other person's  
23 name, Steven DeSimone?

24 MR. KNIGHT: Correct.

25 THE COURT: Expiring on the same day. Where does

## Proceedings

1       that individual reside, in Queens County? Do you know or  
2       are you in any contact with this individual in the last two  
3       years?

4               MR. DIAZ: Yes. Certainly.

5               THE COURT: Anybody in your office?

6               MR. DIAZ: I don't know where he lives now.

7               THE COURT: Is he in New York City?

8               MR. DIAZ: He is a New York resident. December 4  
9       is a proposed date.

10              MR. GOLDMAN: December 4 is a Friday. I am  
11       available that day. That's fine, if it's okay with your  
12       Honor.

13              THE COURT: Where do they stand on that?

14              MR. DIAZ: I am getting the order of protection in  
15       favor of Steven DeSimone.

16              THE COURT: You will get that executed. Another  
17       individual involved in this matter doesn't present a  
18       Molineux bar that I might see. With respect to his wife, I  
19       am sure it's a -- something with which Mr. Ivan will be  
20       prepared to abide by; is that correct?

21              THE DEFENDANT: Yes.

22              THE COURT: That order of protection, during the  
23       pendency of this matter, two year order of protection will  
24       require that you stay away from the home, school, place of  
25       business of Mr. DeSimone and not have any contact. Nobody



## Proceedings

1           else should be having contact with him or any third-party.

2                   Those are your obligations. You understand them,  
3           sir?

4                   THE DEFENDANT: Yes.

5                   THE COURT: As I indicated, we wish you the best.

6                   THE DEFENDANT: I want to thank you also for  
7           taking the time to read through all of that.

8                   THE COURT: Off the record.

9                   (Whereupon, an off the record discussion was held)

10                           (open court)

11                   THE COURT: Is there bail here, posted here?

12                   THE CLERK: Yes.

13                   MR. KNIGHT: We ask that the bail still remain in  
14           effect until maybe a couple of adjournments so we can  
15           monitor the defendant's participation in treatment.

16                   THE COURT: I will do that. That's not terribly  
17           unreasonable. A couple of adjourn dates and then we will  
18           exonerate it. Maybe soon after the first of the year.

19                   MR. GOLDMAN: That's fine.

20                   THE COURT: Plea entered. The adjourn date is  
21           back in this Part K8, December 4. Thank you. Good luck.

22                   MR. KNIGHT: Thank you, your Honor.

23                   MR. GOLDMAN: Thank you.

24

25

# Proceedings

1 \* \* \*

2     Certified to be a true and accurate record of the  
3     proceedings herein.

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JENNIFER ROSENBLATT  
Official Court Reporter

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Serving Veterans in New York: New York's Courts, Laws,  
and Programs Uniquely Designed to Serve Veterans

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Topic Two  
Below the Radar?  
NY Laws and Regulations for  
Veterans

Presented by Benjamin Pomerance







Division of  
Veterans' Affairs

# **New York State Veterans' Laws**

**Updated Through: October 7, 2016**

October 21, 2016

October 21, 2016

2

## **The Most Important Slide**

### **The Crucial Questions:**

**“Have you served in the military?”**

**“Are you currently serving in the military?”**

**“Do you have an immediate family member who served or is presently serving in the military?”**



Division of  
Veterans' Affairs

October 21, 2016

3

## A Request

Please . . .

- (1) Ask the question.
- (2) Ask the follow-up questions.
- (3) Know the resources within your area.
- (4) Make good referrals when necessary.



October 21, 2016

4

## Vital Statistics

- Public Health Law Section 4173(3).
- Registrar is usually entitled to fee.
- **NO FEE** for the search, certification, or certified copy or transcript of a birth or death certificate IF the document is used “in determining the eligibility of any person to participate in the benefits made available by the [VA].”



October 21, 2016

5

## Vital Statistics, Part II

- Domestic Relations Law Section 14-a(3).
- Clerk is usually entitled to fee.
- **NO FEE** for the search, certification, or certified copy or transcript of a marriage certificate “to be used in determining the eligibility of any person to participate in the benefits made available by the veterans administration or by the state of New York.”



October 21, 2016

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## Driver's Licenses

- Distinguishing Veterans mark available on NYS driver's licenses and non-driver's ID cards.
- Currently: **No additional DMV fee** for any future licenses or IDs with the distinguishing mark.
- Veterans who already paid the fee **are** entitled to DMV refund.



October 21, 2016

7

## **Property Tax Exemptions**

- Real Property Tax Law Sections 458, 458-a, 458-b.
- Applications go to local tax assessor.
- A Veteran can receive only one of the three exemptions that NYS offers.
- Cold War Exemption (458-b) : Residential property of a Veteran who served during Cold War Period (Sept. 2, 1945 to December 26, 1991) & who was discharged “under honorable conditions.” (Be prepared to advocate with the assessor).



October 21, 2016

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## **Property Tax Exemptions, Part II**

- Alternative Veterans Exemption (458-a) : Residential property of a Veteran who served during a designated period of war, or who received an Expeditionary Medal.
  - Additional exemption for combat Veterans and for service-connected Veterans
- Eligible Funds Exemption (Sect. 458) : Partial exemption for property that Veteran, spouse, dependent parent, or child under age 21 purchased using money from a VA pension, compensation paid to a POW, bonus or insurance money received upon discharge from active duty.



October 21, 2016

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## **NYS Education Laws**

- Non-resident Veterans attending SUNY and CUNY colleges on a G.I. Bill SHALL receive in-state tuition rate.
- NYS Education Law Section 3301-18 = Interstate Compact on Educational Opportunity for Military Children.
  - Goal of removing barriers in enrolling in new school districts, participating in academic and extra-curricular activities, facilitating on-time graduation, etc.
- Education Law Section 305 = Operation Recognition



October 21, 2016

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## **NYS Education Laws, Part II**

- Education Law Section 668: Regents Scholarships for Children of Deceased & Disabled Veterans (\$450 per year).
- Qualifications:
  - (1) Parent served during wartime or a specified period of national emergency (stated in the law);
  - (2) As a result of military service, parent suffered a disability ratable at 40% or more, OR was a POW, OR was classified as MIA or died in service.
  - (3) Veteran parent is a NYS resident or was a NYS resident at time of death.



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## **NYS Education Laws, Part III**

- Education Law Section 669-a: Veterans Tuition Awards
- Eligibility = U.S. citizenship + New York State residency + Combat service (or receipt of an Armed Forces Expeditionary Medal) in hostilities occurring after Feb. 28, 1961.
- Pays for 8 semesters of undergraduate tuition, OR 6 semesters of graduate tuition, OR 4 semesters of vocational training.
- To qualify, the Veteran must first apply for FAFSA/TAP and complete the TAP supplement for VTA.



October 21, 2016

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## **State Veterans Homes**

- Public Health Law Article 26-A
- Locations: Broome, Erie, Queens, Suffolk, and Westchester counties
- Skilled nursing care for eligible Veterans and their spouses
- Cost of care is considerably less than a private sector nursing home
- VA disability rating of 70% or above = FREE skilled nursing care
- Veteran and/or spouse is permitted to keep full VA Pension amount
  - \*\* No "Medicaid offset" reducing VA pension to \$90/month\*\*
- Some Homes offer "adult day care" options





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## **State Veterans Homes, Part II**

### **-- Admission Requirements:**

- (1) Honorable Discharge**
- (2) At least 90 days of active duty military service**
- (3) NYS resident OR entered military service from NYS**
- (4) Medical criteria from NYS Dep't of Health or SUNY (Suffolk County)**

**-- NOT limited to combat Veterans only**

**-- NOT limited to wartime Veterans only**

**-- Veteran with spouse = Highest admissions priority**



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## **Personal Bankruptcy**

**-- Debtor/Creditor Law Article 10-A, Section 282(2)(b).**

**-- Debtor domiciled in New York State who is a Veteran or a family member receiving Veterans' benefits from the federal government or from any state.**

**-- Money received from ANY Veterans' benefits is exempt from the court's calculation of the debtor's estate. (The debtor MAY chose to do so).**



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## **Soldiers & Sailors Civil Relief Act**

- Military-specific, consumer-friendly law . . . Often overlooked.
- State law counterpart to the federal Servicemembers' Civil Relief Act
- **Objective**: "[To] protect those who have been obliged to drop their own affairs to take up the burdens of the nation."
  - Boone v. Lightner, 319 U.S. 561, 575 (1943)
- **Interpretation**: "The Act should be read with an eye friendly to those who dropped their affairs to answer their country's call."
  - LeMaistre v. Leffers, 333 U.S. 1, 6 (1946)



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## **Interest Rate Cap**

- NYS Military Law Section 323-A
- Caps interest charged on any debt that a military member incurs individually, or with the military member's spouse jointly, **PRIOR TO ENTERING MILITARY SERVICE** at a rate of 6%.
- Must show the court that the ability of the military member to pay an interest rate above 6% is **materially affected** by military service.
- Court will require creditor to **forgive the interest** above the 6% cap, not merely defer it (i.e., it does not accrue and linger on the books for the military member to pay after leaving military service).



October 21, 2016

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## **Protection Against Evictions**

### **-- NYS Military Law Section 309**

**-- In any situation where a landlord seeks a court order to evict a servicemember and/or dependents, the court shall grant a stay of up to six months if the Servicemember requests it.**

**-- Servicemember must demonstrate that military service materially affected his or her ability to pay the agreed rent.**



NEW YORK  
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October 21, 2016

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## **Protection Against Foreclosures**

### **-- NYS Military Law Section 312**

**-- IF a party obtains a mortgage (or a trust deed, or other security loan) on property BEFORE entering active duty service:**

**-- A foreclosure, forced sale, or seizure of the property in question IS NOT VALID IF made while servicemember is on active duty OR six months after discharge.**

**-- Any party knowingly attempting to cause a foreclosure, forced sale, or seizure deemed invalid under this section is guilty of a misdemeanor, and can be fined up to \$1,000 and imprisoned for up to one year.**

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## **Other Consumer Protections**

- Installment Contracts (NYS Military Law Section 311)
- Car Rental Contracts (NYS Military Law Section 311-a)
- Cell Phone & Internet Contracts (NYS Military Law Section 311-c)
- Real Property Taxes (NYS Military Law Section 314)
- Income Taxes (NYS Military Law Section 315)
- Insurance Policies (NYS Military Law Section 316)
- Storage Liens (NYS Military Law Section 316-a)



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## **Stays Of Actions**

- If a Servicemember's ability to appear in a civil proceeding is materially affected by his or her military service, then the tribunal hearing the case shall, upon the motion of the Servicemember, stay the proceeding for a reasonable time period (NYS Military Law Section 304; see *a/so* Military Law Section 307 for continuance of stays).
- Time in military service does not count against a statute of limitations for any civil proceeding (NYS Military Law Section 308)
- Most professions require licensing must automatically extend a Servicemember's license for the full period of active duty military service and for twelve months post-discharge (NYS Military Law Section 308-b)



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## **Child Custody Cases**

- Domestic Relations Law Section 241 (1).
- Servicemember comes home = “Substantial change in circumstances” regarding the family.
- Court **MUST**, upon the request of either parent, determine whether the existing custody order or judgment in effect should be modified.
- Court **MUST** do the same for periods of leave.



October 21, 2016

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## **NYS Civil Service Benefits**

- Military Law Section 243(b).
- Anyone who missed a NYS Civil Service exam because of ANY active duty obligations – including active duty for training purposes -- **MUST** receive the opportunity for a makeup exam.



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## **NYS Civil Service Benefits, Part II**

- Civil Service Law Section 85.
- Extra credits on civil service exams.
- “Disabled Veterans” = 10 additional points for original appointment, 5 for promotion.
- All other Veterans = 5 additional points for original appointment, 2 ½ for promotion.



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## **NYS Civil Service Benefits, Part III**

- “Disabled Veteran” = Essentially means that anyone receiving disability compensation payments from the VA, or anyone eligible to do so, qualifies for this purpose.
- Veterans also receive preferred status in retention of NYS Civil Service positions. NYS looks at date of original appointment. For a Veteran:
  - Disabled Veterans = Actual date + 60 months.
  - Non-disabled Veteran = Actual date + 30 months.
- Head-of-household spouse of Veteran who has 100% rating = Actual date + 60 months.

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## **NYS Civil Service Benefits, Part IV**

- Civil Service Law Section 55 (c).
- Authorized 500 positions to be filled by “qualified wartime Veterans with disabilities.”
- No requirement to take Civil Service exam.
- Any Veteran with a Purple Heart or 20%+ disability rating is automatically eligible; others must have a disability certified by NYS Employee Health Services (NOT necessarily service-connected)



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## **The Buyback**

- Article 20 of NYS Retirement & Social Security Law – amended in 2016.
- **NO GEOGRAPHIC RESTRICTIONS ANY LONGER.**
- To qualify, the Veteran must have:
  - (1) Honorable discharge; and
  - (2) Five or more years of credited service in the NYS Retirement System; and
  - (3) No credit for military service in any other public retirement system in NYS;
  - (4) Apply for and purchase the military service credit prior to retiring.
- Can buy back **three years of active** military service



October 21, 2016

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## Veterans Treatment Courts

- Diversion courts for justice-involved Veterans to undergo a rigorous course of assigned treatment in lieu of incarceration.
  - Suspended sentence for the Veteran defendant . . . **NOT** a “get out of jail free” card
  - DA plays “gatekeeper” function
  - Presiding judge, in consultation with the DA, defense counsel, and Treatment Court Team, establishes the requirements the Veteran defendant must complete — commonly takes two years or longer.
  - Failure to complete required treatment program = Incarceration (generally)
- Court assigns a Veteran “peer mentor” to each Veteran defendant
- Other Treatment Court Team activities generally include:
  - Ensuring complete sobriety throughout the process
  - Connecting the Veteran with healthcare services
  - Connections to federal, state, and local Veterans’ benefits and resources
- Twenty-seven Veterans Treatment Courts in NYS
- Learn the court’s unique rules — no standardization!



October 21, 2016

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## Final Thoughts

- No matter what your area of practice may be, you can help change a Veteran’s life.
  - Ask the question: “**Have you ever served in the military?**”
  - At minimum, learn some of the fundamental Veterans’ resources in your area.
  - Make a good handoff to somebody who can help.
- Veterans Are People.
  - Not a stereotype
  - Not a news article
  - Not a movie
- “Sad is the nation that has no heroes; sadder still is the nation that has heroes and forgets about them.”





## **Veterans Real Property Tax Exemptions**

### **Real Property Tax Law Article 4, Title 2, Section 458**

#### **§ 458. Veterans**

The following property shall be exempt from taxation:

1. All property exempt by law from execution, other than an exempt homestead. But real property purchased with the proceeds of a pension, bonus or insurance, or dividends or refunds on such insurance, or payments received as prisoner of war compensation from the United States government, heretofore or hereafter received, hereinafter referred to as eligible funds, granted by the United States or by this state for military or naval services, and owned by the person who rendered such services, or by the spouse or unremarried surviving spouse, or dependent father or mother, or the children under twenty-one years of age of such person is subject to taxation as herein provided.

(1) Such property shall be assessed in the same manner as other real property in the tax districts. On or before the appropriate taxable status date, a verified application on a form prescribed or approved by the commissioner for the exemption of such real property from taxation may be filed in the appropriate assessor's office by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including the amount of eligible funds used in or toward the purchase of such property.

(2) Except as provided in subdivision five of this section, no such exemption on account of eligible funds paid on account of military or naval services rendered by an individual shall be allowed in excess of five thousand dollars. For the purposes of this subdivision any established exemption, or newly claimed exemption, or an aggregate thereof, as the case may be, in excess of any multiple of fifty dollars shall be regarded as being the nearest multiple of fifty dollars and allowed in such amount. If the amount of such exemption has no nearest multiple of fifty dollars, it shall be regarded as being the next higher multiple of fifty dollars and allowed in such amount. The mingling of such eligible funds with other funds or their retention by the United States for insurance premiums shall not bar the granting of a claim for such exemption. Except as provided in subdivision five of this section, no such exemption on account of eligible funds paid on account of military or naval services rendered by an individual shall be allowed in excess of seven thousand five hundred dollars. For the purposes of this subdivision any established exemption, or newly claimed exemption, or an aggregate thereof, as the case may be, in excess of any multiple of fifty dollars shall be regarded as being the nearest multiple of fifty dollars and allowed in such amount. If the amount of such exemption has no nearest multiple of fifty dollars, it shall be regarded as being the next higher multiple of fifty dollars and allowed in such amount. The mingling of such eligible funds with other funds or their retention by the United States for insurance premiums shall not bar the granting of a claim for such exemption.

(3) If the assessors are satisfied that the applicant is entitled to any exemption, they shall make appropriate entries upon the assessment-roll opposite the description of such property and subtract the total amount of such exemption from the total amount assessed

pursuant to the provisions of paragraph one of this subdivision. Such entries shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. Such real property, to the extent of the exemption entered by the assessors, shall be exempt from state, county and general municipal taxation, but shall be taxable for local school purposes. The provisions herein, relating to the assessment and exemption of property purchased with eligible funds apply and shall be enforced in each municipal corporation authorized to levy taxes.

(4) If the application for exemption is not granted, the property shall be subject to taxation for all purposes.

(5) Notwithstanding the provisions of this section or any other provision of law, in any city with a population of one million or more, applications for the exemption authorized pursuant to this section shall be considered timely filed if they are filed on or before the fifteenth day of March of the appropriate year.

2. Real property purchased with moneys collected by popular subscription in partial recognition of extraordinary services rendered by any honorably discharged veteran of world war one, world war two, or of the hostilities which commenced June twenty-seventh, nineteen hundred fifty, who sustained permanent disability while on military duty, either total or partial, and owned by the person who sustained such injuries, or by his or her spouse or unremarried surviving spouse, or dependent father or mother, is subject to taxation as herein provided. Such property shall be assessed in the same manner as other real property in the tax district. At the meeting of the assessors to hear complaints concerning the assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including the amount of moneys so raised and used in or toward the purchase of such property. No exemption on account of any such gift shall be allowed in excess of five thousand dollars. The application for exemption shall be presented and action thereon taken in the manner provided by subdivision one of this section. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The provisions herein, relating to the assessment and exemption of property purchased with moneys raised by popular subscription, apply and shall be enforced in each municipal corporation authorized to levy taxes.

3. In addition to any exemption from taxation on real property which may be allowed to veterans pursuant to the provisions of subdivisions one and two of this section, the primary residence of any seriously disabled veteran who is eligible for pecuniary assistance from the United States government, or who has received pecuniary assistance from the United States government and has applied such assistance toward the acquisition or modification of a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability, and the necessary land therefor, shall be fully exempt from taxation and special district charges and assessments and special ad valorem levies. The same exemption shall also be allowed on such a housing unit owned by the unremarried surviving spouse of such veteran, or by such veteran and spouse while occupying such premises as a residence. The unremarried surviving spouse of such veteran may transfer the exemption to any new housing unit to be used as his or her primary residence. If an exemption has already been granted pursuant to the provisions of subdivisions one and two of this section, application for a further exemption as herein provided may be made and action taken thereon in the same manner as set forth in subdivision one of this section.

4. The definitions set forth in section one hundred two of this chapter shall not apply to this section and the terms used in this section shall have the same meaning as they had prior to the enactment of this chapter.

4-a. For the purposes of this section, the term "military or naval services" shall be deemed to also include service: [a] by a person who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the department of defense; [b] service by a United States civilian employed by the American Field Service who served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions; or [c] service by a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates who served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions.

5. (a) Notwithstanding the limitation on the amount of exemption prescribed in subdivision one or two of this section, upon adoption of a local law by the governing board of a county, city, town or village that levies taxes or for which taxes are levied on an assessment roll, if the total assessed value of the real property for which such exemption has been granted increases or decreases as the result of a revaluation or update of assessments, and a material change in level of assessment, as provided in title two of article twelve of this chapter, is certified for the assessment roll pursuant to the rules of the commissioner, the assessor shall increase or decrease the amount of such exemption by multiplying the amount of such exemption by the change in level of assessment factor. If the assessor receives the certification after the completion, verification and filing of the final assessment roll, the assessor shall certify the amount of exemption as recomputed pursuant to this paragraph to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the assessor on the roll.

(b) Notwithstanding the provisions of paragraph (b) of subdivision six of this section, in municipalities granting exemptions pursuant to section four hundred fifty-eight-a of this article, a local law adopted pursuant to paragraph (a) of this subdivision may also authorize owners of property who previously received an exemption pursuant to this section, but who

opted instead to receive exemption pursuant to section four hundred fifty-eight-a, to again receive an exemption pursuant to this section upon application by the owner within one year of the adoption of such local law. Where such provision is included in the local law, the assessor shall recompute all exemptions granted pursuant to this section by multiplying the amount of each such exemption by the cumulative change in level of assessment factor certified by the commissioner measured from the assessment roll immediately preceding the assessment roll on which exemptions were first granted pursuant to section four hundred fifty-eight-a; provided, however, that if an exemption pursuant to this section was initially granted to a parcel on a later assessment roll, the cumulative change in level factor to be used in recomputing that exemption shall be measured from the assessment roll immediately preceding the assessment roll on which that exemption was initially granted. No refunds or retroactive entitlements shall be granted.

(c) Notwithstanding the provisions of subdivision four of this section, terms used in this subdivision shall be subject to the definitions of section one hundred two of this chapter. For special assessing units, the change in level of assessment factor to be used for purposes of this subdivision is the municipal-wide change in level of assessment factor determined for the class in which the property subject to exemption is included.

(d)

(i) For the purposes of this paragraph (d), a "recompute exemption" means the sum of the original exemption and any additional eligible funds received multiplied by the change in level of assessment from the assessment roll in the year the exemption was originally granted.

(ii) An assessing unit which finally files a change in level of assessment roll in or after the calendar year nineteen hundred ninety-eight may, pursuant to local law adopted by the governing board of a county, city, town or village that levies taxes or for which taxes are levied on an assessment roll, grant to every veteran who is entitled to any additional eligible funds a recompute exemption in lieu of the exemption otherwise authorized by this subdivision. Such recompute exemption may be granted on any change in level of assessment roll filed in or after calendar year nineteen hundred ninety-eight. A local law adopted pursuant to this paragraph (d) shall not be subject to referendum.

6. (a) (i) Except as otherwise provided in subparagraph of this paragraph, no new exemption may be granted pursuant to subdivision one or former subdivision five of this section on an assessment roll based upon a taxable status date occurring on or after March second, nineteen hundred eighty-six, except for purposes of taxes levied by or on behalf of a county, city, town or village that has enacted and has in effect a local law as provided in subdivision four of section four hundred fifty-eight-a of this chapter. Notwithstanding the foregoing, the owner of real property receiving an exemption pursuant to subdivision one or former subdivision five of this section prior to March second, nineteen hundred eighty-six may continue to receive the exemption on the property to which it is applicable.

(ii) In any city with a population of one million or more, no new exemption may be granted pursuant to subdivision one or former subdivision five of this section on an assessment roll based upon a taxable status date occurring on or after January sixth, nineteen hundred eighty-five, except for purposes of taxes levied by or on behalf of such city that has enacted and has in effect a local law as provided in subdivision four of section four hundred fifty-eight-a of this chapter. Notwithstanding the foregoing provisions of this subparagraph, the owner of real property receiving an exemption pursuant to subdivision one or former subdivision five of this section prior to January sixth, nineteen hundred eighty-five may continue to receive the exemption on the property to which it is applicable.

(iii) Except as provided in paragraph (b) of former subdivision five of this section, where such property is sold and moneys equaling or exceeding the amount of eligible funds used in the purchase of the parcel are received upon such sale, if such moneys are at any time thereafter used to purchase another parcel, an exemption may be granted as provided in subdivision one of this section provided the parcel is otherwise eligible for such exemption.

(iv) The provisions of former subdivision five of this section as referred to in this paragraph are the provisions originally enacted by chapter one hundred thirty-four of the laws of nineteen hundred seventy-nine and repealed by chapter four hundred ten of the laws of nineteen hundred ninety-four.

(b) In lieu of receiving an exemption pursuant to this section, the owner may apply for an exemption pursuant to section four hundred fifty-eight-a or four hundred fifty-eight-b of this title. If an exemption is granted pursuant to section four hundred fifty-eight-a, the owner may not thereafter receive an exemption pursuant to this section, unless the owner sells the property receiving exemption and uses the proceeds of such sale to purchase property in a municipality that has adopted and has in effect a local law as provided in subdivision four of section four hundred fifty-eight-a of this title. In such event, the owner may again receive exemption pursuant to subdivision one of this section.

7. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to any real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to subdivision one, two or three of this section, were such person or persons the owner or owners of such real property.

8.

(a) For the purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

(b) Provided that all other eligibility criteria of this section are met, that proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such real property owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

(c) Notwithstanding paragraph (b) of this subdivision, a tenant-stockholder who resides in a dwelling that is subject to the provisions of either article two, four, five or eleven of the private housing finance law shall not be eligible for an exemption pursuant to this section.

(d) Notwithstanding paragraph (b) of this subdivision, real property owned by a cooperative apartment corporation may be exempt from taxation pursuant to this section by a municipality in which such real property is located only if the governing body of such municipality, after public hearing, adopts a local law, ordinance or resolution providing therefor.

9. Notwithstanding the provisions of subdivision one of this section, the governing body of any municipality may, after public hearing, adopt a local law, ordinance or resolution providing where a veteran, the spouse of the veteran or unremarried surviving spouse already receiving an exemption pursuant to this section sells the property receiving the exemption and purchases property within the same city, town or village, the assessor shall transfer and prorate, for the remainder of the fiscal year, the exemption which the veteran, the spouse of the veteran or unremarried surviving spouse received. The prorated exemption shall be based upon the date the veteran, the spouse of the veteran or unremarried surviving spouse obtains title to the new property and shall be calculated by multiplying the tax rate or rates for each municipal corporation which levied taxes, or for which taxes were levied, on the appropriate tax roll used for the fiscal year or years during which the transfer occurred times the previously granted exempt amount times the fraction of each fiscal year or years remaining subsequent to the transfer of title. Nothing in this section shall be construed to remove the requirement that any such veteran, the spouse of the veteran or unremarried surviving spouse transferring an exemption pursuant to this subdivision shall reapply for the exemption authorized pursuant to this section on or before the following taxable status date, in the event such veteran, the spouse of the veteran or unremarried surviving spouse wishes to receive the exemption in future fiscal years.

10. The commissioner shall develop in consultation with the director of the New York state division of veterans' affairs a listing of documents to be used to establish eligibility under this section, including but not limited to a certificate of release or discharge from active duty also known as a DD-214 form or an Honorable Service Certificate/Report of Causality from the department of defense. Such information shall be made available to each county, city, town or village assessor's office, or congressional chartered veterans service officers who request such information. The listing of acceptable military records shall be made available on the internet websites of the division of veterans' affairs and the office of real property tax services.

#### **Real Property Tax Law Article 4, Title 2, Section 458-a**

##### **§ 458-a. Veterans; alternative exemption**

1. The following terms whenever used or referred to in this section shall have the following meanings unless a different meaning clearly appears in the context:

(a) "Period of war" means the Spanish-American war; the Mexican border period; World War I; World War II; the hostilities, known as the Korean war, which commenced June twenty-seventh, nineteen hundred fifty and terminated on January thirty-first, nineteen hundred fifty-five; the hostilities, known as the Vietnam war, which commenced February twenty-eighth, nineteen hundred sixty-one and terminated on May seventh, nineteen hundred seventy-five; and the hostilities, known as the Persian Gulf conflict, which commenced August second, nineteen hundred ninety.

(b) "Service connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval or air service.

(c) "Qualified owner" means a veteran, the spouse of a veteran or the unremarried surviving spouse of a veteran. Where property is owned by more than one qualified owner, the exemption to which each is entitled may be combined. Where a veteran is also the unremarried surviving spouse of a veteran, such person may also receive any exemption to which the deceased spouse was entitled.

(d) "Qualifying residential real property" means property owned by a qualified owner which is used exclusively for residential purposes; provided however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section. Such property must be the primary residence of the veteran or unremarried surviving spouse of the veteran, unless the veteran or unremarried surviving spouse is absent from the property due to medical reasons or institutionalization. In the event the veteran dies and there is no unremarried surviving spouse, "qualifying residential real property" shall mean the primary residence owned by a qualified owner prior to death, provided that the title to the property becomes vested in the dependent father or mother or dependent child or children under twenty-one years of age of a veteran by virtue of devise by or descent from the deceased qualified owner, provided that the property is the primary residence of one or all of the devisees.

(e) "Veteran" means a person (i) who served in the active military, naval, or air service during a period of war, or who was a recipient of the armed forces expeditionary medal, navy expeditionary medal, marine corps expeditionary medal, or global war on terrorism expeditionary medal, and who was discharged or released therefrom under honorable conditions, (ii) who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the department of defense, (iii) who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, (iv) who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or [v] notwithstanding any other provision of law to the contrary, who are members of the reserve components of the armed forces of the United States who received an honorable discharge

or release therefrom under honorable conditions, but are still members of the reserve components of the armed forces of the United States provided that such members meet all other qualifications under the provisions of this section .

(f) "Latest state equalization rate" means the latest final state equalization rate or special equalization rate established by the [fig 1] commissioner pursuant to article twelve of this chapter. The [fig 2] commissioner shall establish a special equalization rate if it finds that there has been a material change in the level of assessment since the establishment of the latest state equalization rate, but in no event shall such special equalization rate exceed one hundred. In the event that the state equalization rate exceeds one hundred, then the state equalization rate shall be one hundred for the purposes of this section. Where a special equalization rate is established for purposes of this section, the assessor is directed and authorized to recompute the alternative veterans exemption on the assessment roll by applying such special equalization rate instead of the latest state equalization rate applied in the previous year and to make the appropriate corrections on the assessment roll, notwithstanding the fact that such assessor may receive the special equalization rate after the completion, verification and filing of such final assessment roll. In the event that the assessor does not have custody of the roll when such recomputation is accomplished, the assessor shall certify such recomputation to the local officers having custody and control of such roll, and such local officers are hereby directed and authorized to enter the recomputed alternative veterans exemption certified by the assessor on such roll.

(g) "Latest class ratio" means the latest final class ratio established by the commissioner pursuant to title one of article twelve of this chapter for use in a special assessing unit as defined in section eighteen hundred one of this chapter.

2. (a) Qualifying residential real property shall be exempt from taxation to the extent of fifteen percent of the assessed value of such property; provided, however, that such exemption shall not exceed twelve thousand dollars or the product of twelve thousand dollars multiplied by the latest state equalization rate for the assessing unit, or in the case of a special assessing unit, the latest class ratio, whichever is less.

(b) In addition to the exemption provided by paragraph (a) of this subdivision, where the veteran served in a combat theatre or combat zone of operations, as documented by the award of a United States campaign ribbon or service medal, or the armed forces expeditionary medal, navy expeditionary medal, marine corps expeditionary medal, or global war on terrorism expeditionary medal, qualifying residential real property also shall be exempt from taxation to the extent of ten percent of the assessed value of such property; provided, however, that such exemption shall not exceed eight thousand dollars or the product of eight thousand dollars multiplied by the latest state equalization rate for the assessing unit, or in the case of a special assessing unit, the class ratio, whichever is less.

(c) In addition to the exemptions provided by paragraphs (a) and (b) of this subdivision, where the veteran received a compensation rating from the United States veteran's administration or from the United States department of defense because of a service connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by fifty percent of the veteran's disability rating; provided, however, that such exemption shall not exceed



forty thousand dollars or the product of forty thousand dollars multiplied by the latest state equalization rate for the assessing unit, or in the case of a special assessing unit, the latest class ratio, whichever is less. For purposes of this paragraph, where a person who served in the active military, naval or air service during a period of war died in service of a service connected disability, such person shall be deemed to have been assigned a compensation rating of one hundred percent.

(d) Limitations.

(i) The exemption from taxation provided by this subdivision shall be applicable to county, city, town, village and school district taxation if the governing body of the school district in which the property is located, after public hearings, adopts a resolution providing such exemption, the procedure for such hearing and resolution shall be conducted separately from the procedure for any hearing and local law or resolution conducted pursuant to subparagraph (ii) of this paragraph, paragraph [b] of subdivision four, paragraph (d) of subdivision six and paragraph (b) of subdivision seven of this section.

(ii) Each county, city, town, village or school district may adopt a local law to reduce the maximum exemption allowable in paragraphs (a), (b) and (c) of this subdivision to nine thousand dollars, six thousand dollars and thirty thousand dollars, respectively, or six thousand dollars, four thousand dollars and twenty thousand dollars, respectively. Each county, city, town, village or school district is also authorized to adopt a local law to increase the maximum exemption allowable in paragraphs (a), (b) and (c) of this subdivision to fifteen thousand dollars, ten thousand dollars and fifty thousand dollars, respectively; eighteen thousand dollars, twelve thousand dollars and sixty thousand dollars, respectively; twenty-one thousand dollars, fourteen thousand dollars, and seventy thousand dollars, respectively; twenty-four thousand dollars, sixteen thousand dollars, and eighty thousand dollars, respectively; twenty-seven thousand dollars, eighteen thousand dollars, and ninety thousand dollars, respectively; thirty thousand dollars, twenty thousand dollars, and one hundred thousand dollars, respectively; thirty-three thousand dollars, twenty-two thousand dollars, and one hundred ten thousand dollars, respectively; thirty-six thousand dollars, twenty-four thousand dollars, and one hundred twenty thousand dollars, respectively. In addition, a county, city, town, village or school district which is a "high-appreciation municipality" as defined in this subparagraph is authorized to adopt a local law to increase the maximum exemption allowable in paragraphs (a), (b) and (c) of this subdivision to thirty-nine thousand dollars, twenty-six thousand dollars, and one hundred thirty thousand dollars, respectively; forty-two thousand dollars, twenty-eight thousand dollars, and one hundred forty thousand dollars, respectively; forty-five thousand dollars, thirty thousand dollars and one hundred fifty thousand dollars, respectively; forty-eight thousand dollars, thirty-two thousand dollars and one hundred sixty thousand dollars, respectively; fifty-one thousand dollars, thirty-four thousand dollars and one hundred seventy thousand dollars, respectively; fifty-four thousand dollars, thirty-six thousand dollars and one hundred eighty thousand dollars, respectively. For purposes of this subparagraph, a "high-appreciation municipality" means: (A) a special assessing unit that is a city, (B) a county for which the commissioner has established a sales price differential factor for purposes of the STAR exemption authorized by section four hundred twenty-five of this title in three consecutive years, and (C) a city, town, village or school district which is wholly or partly located within such a county.

3. Application for exemption must be made by the owner, or all of the owners, of the property on a form prescribed by the commissioner. The owner or owners shall file the

completed form in the assessor's office on or before the appropriate taxable status date. The exemption shall continue in full force and effect for all appropriate subsequent tax years and the owner or owners of the property shall not be required to refile each year. Applicants shall be required to refile on or before the appropriate taxable status date if the percentage of disability percentage increases or decreases or may refile if other changes have occurred which affect qualification for an increased or decreased amount of exemption. Any applicant convicted of making any willful false statement in the application for such exemption shall be subject to the penalties prescribed in the penal law.

3-a. Notwithstanding the provisions of this section or any other provision of law, in a city having a population of one million or more, applications for the exemption authorized pursuant to this section shall be considered timely filed if they are filed on or before the fifteenth day of March of the appropriate year.

4. (a) Notwithstanding the foregoing provisions of this section, no later than ninety days before the taxable status date next occurring on or after the thirty-first day of December nineteen hundred eighty-four, the governing board of any county, city, town or village may adopt a local law to provide that no exemption shall be granted pursuant to this section for the purposes of taxes levied for such county, city, town or village. For the purposes of a county which is not an assessing unit, the taxable status date next occurring on or after December thirty-first, nineteen hundred eighty-four shall mean the first such taxable status date of any city or town within such county upon the assessment roll of which the county levies taxes. A local law adopted pursuant to this paragraph may be repealed by the governing board of the applicable county, city, town or village. Such repeal must occur at least ninety days prior to the taxable status date of such county, city, town or village.

(b) Notwithstanding any other provision of law to the contrary, no later than ninety days before the taxable status date next occurring on or after the thirty-first day of December, two thousand thirteen, the governing body of a school district may repeal a resolution adopted pursuant to subparagraph (i) of paragraph (d) of subdivision two of this section providing the exemption from taxation pursuant to this section for the purposes of taxes levied by such school district. Nothing contained in this paragraph shall be construed to preclude the governing body of a school district from subsequently adopting a resolution granting such exemption pursuant to this section.

5. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to any real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to this section, were such person or persons the owner or owners of such real property.

6. (a) For the purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

(b) Provided that all other eligibility criteria of this section are met, that proportion of the assessment of such real property owned by a cooperative apartment corporation

determined by the relationship of such real property vested in such tenant-stockholder to such real property owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

(c) Notwithstanding paragraph (b) of this subdivision, a tenant-stockholder who resides in a dwelling that is subject to the provisions of either article two, four, five or eleven of the private housing finance law shall not be eligible for an exemption pursuant to this section.

(d) Notwithstanding paragraph (b) of this subdivision, real property owned by a cooperative corporation may be exempt from taxation pursuant to this section by a municipality in which such property is located only if the governing body of such municipality, after public hearing, adopts a local law, ordinance or resolution providing therefor.

7. (a) As used in this subdivision, "Gold Star Parent" shall mean the parent of a child who died in the line of duty while serving in the United States armed forces during a period of war.

(b) A county, city, town, [fig 1] village or school district may adopt a local law to include a Gold Star Parent within the definition of "qualified owner", as provided in paragraph (c) of subdivision one of this section, and to include property owned by a Gold Star Parent within the definition of "qualifying residential real property" as provided in paragraph (d) of subdivision one of this section, provided that such property shall be the primary residence of the Gold Star Parent.

(c) The additional exemption provided for in paragraph (c) of subdivision two of this section shall not apply to real property owned by a Gold Star Parent.

8. Notwithstanding the provisions of paragraph [c] of subdivision one of this section and subdivision three of this section, the governing body of any municipality may, after public hearing, adopt a local law, ordinance or resolution providing that where a veteran, the spouse of the veteran or unremarried surviving spouse already receiving an exemption pursuant to this section sells the property receiving the exemption and purchases property within the same city, town or village, the assessor shall transfer and prorate, for the remainder of the fiscal year, the exemption received. The prorated exemption shall be based upon the date the veteran, the spouse of the veteran or unremarried surviving spouse obtains title to the new property and shall be calculated by multiplying the tax rate or rates for each municipal corporation which levied taxes, or for which taxes were levied, on the appropriate tax roll used for the fiscal year or years during which the transfer occurred times the previously granted exempt amount times the fraction of each fiscal year or years remaining subsequent to the transfer of title. Nothing in this section shall be construed to remove the requirement that any such veteran, the spouse of the veteran or unremarried surviving spouse transferring an exemption pursuant to this subdivision shall reapply for the exemption authorized pursuant to this section on or before the following taxable status date, in the event such veteran, the spouse of the veteran or unremarried surviving spouse wishes to receive the exemption in future fiscal years.

9. The commissioner shall develop in consultation with the director of the New York state division of veterans' affairs a listing of documents to be used to establish eligibility under this section, including but not limited to a certificate of release or discharge from active duty also known as a DD-214 form or an Honorable Service Certificate/Report of Causality from the department of defense. Such information shall be made available to each county, city, town or village assessor's office, or congressional chartered veterans service officers who request such information. The listing of acceptable military records shall be made available on the internet websites of the division of veterans' affairs and the office of real property tax services.

**Real Property Tax Law Article 4, Title 2, Section 458-b**

§ 458-b. Exemption for Cold War veterans

1. As used in this section:

(a) "Cold War veteran" means a person, male or female, who served on active duty in the United States armed forces, during the time period from September second, nineteen hundred forty-five to December twenty-sixth, nineteen hundred ninety-one, and was discharged or released therefrom under honorable conditions.

(b) "Armed forces" means the United States army, navy, marine corps, air force, and coast guard.

(c) "Active duty" means full-time duty in the United States armed forces, other than active duty for training.

(d) "Service connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty on active military, naval or air service.

(e) "Qualified owner" means a Cold War veteran, the spouse of a Cold War veteran, or the unremarried surviving spouse of a deceased Cold War veteran. Where property is owned by more than one qualified owner, the exemption to which each is entitled may be combined. Where a veteran is also the unremarried surviving spouse of a veteran, such person may also receive any exemption to which the deceased spouse was entitled.

(f) "Qualified residential real property" means property owned by a qualified owner which is used exclusively for residential purposes; provided, however, that in the event that any portion of such property is not used exclusively for residential purposes, but is used for other purposes, such portion shall be subject to taxation and only the remaining portion used exclusively for residential purposes shall be subject to the exemption provided by this section. Such property shall be the primary residence of the Cold War veteran or the unremarried surviving spouse of a Cold War veteran, unless the Cold War veteran or unremarried surviving spouse is absent from the property due to medical reasons or institutionalization.

(g) "Latest state equalization rate" means the latest final state equalization rate or special equalization rate established by the commissioner pursuant to article twelve of this chapter.

The commissioner shall establish a special equalization rate if it finds that there has been a material change in the level of assessment since the establishment of the latest state equalization rate, but in no event shall such special equalization rate exceed one hundred. In the event that the state equalization rate exceeds one hundred, then the state equalization rate shall be one hundred for the purposes of this section. Where a special equalization rate is established for purposes of this section, the assessor is directed and authorized to recompute the Cold War veterans exemption on the assessment roll by applying such special equalization rate instead of the latest state equalization rate applied in the previous year and to make the appropriate corrections on the assessment roll, notwithstanding the fact that such assessor may receive the special equalization rate after the completion, verification and filing of such final assessment roll. In the event that the assessor does not have custody of the roll when such recomputation is accomplished, the assessor shall certify such recomputation to the local officers having custody and control of such roll, and such local officers are hereby directed and authorized to enter the recomputed Cold War veterans exemption certified by the assessor on such roll.

(h) "Latest class ratio" means the latest final class ratio established by the commissioner pursuant to title one of article twelve of this chapter for use in a special assessing unit as defined in section eighteen hundred one of this chapter.

2. (a) Each county, city, town or village may adopt a local law to provide that qualifying residential real property shall be exempt from taxation to the extent of either: (i) ten percent of the assessed value of such property; provided however, that such exemption shall not exceed eight thousand dollars or the product of eight thousand dollars multiplied by the latest state equalization rate of the assessing unit, or, in the case of a special assessing unit, the latest class ratio, whichever is less or; (ii) fifteen percent of the assessed value of such property; provided however, that such exemption shall not exceed twelve thousand dollars or the product of twelve thousand dollars multiplied by the latest state equalization rate for the assessing unit, or, in the case of a special assessing unit, the latest class ratio, whichever is less.

(b) In addition to the exemption provided by paragraph (a) of this subdivision, where the Cold War veteran received a compensation rating from the United States veterans affairs or from the United States department of defense because of a service connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property, multiplied by fifty percent of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed forty thousand dollars, or the product of forty thousand dollars multiplied by the latest state equalization rate for the assessing unit, or, in the case of a special assessing unit, the latest class ratio, whichever is less.

(c) Limitations.

(i) The exemption from taxation provided by this subdivision shall be applicable to county, city, town, and village taxation, but shall not be applicable to taxes levied for school purposes.

(ii) If a Cold War veteran receives the exemption under section four hundred fifty-eight or four hundred fifty-eight-a of this title, the Cold War veteran shall not be eligible to receive the exemption under this section.

(iii) The exemption provided by paragraph (a) of this subdivision shall be granted for a

period of ten years. The commencement of such ten year period shall be governed pursuant to this subparagraph. Where a qualified owner owns qualifying residential real property on the effective date of the local law providing for such exemption, such ten year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring on or after the effective date of the local law providing for such exemption. Where a qualified owner does not own qualifying residential real property on the effective date of the local law providing for such exemption, such ten year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring at least sixty days after the date of purchase of qualifying residential real property; provided, however, that should the veteran apply for and be granted an exemption on the assessment roll prepared pursuant to a taxable status date occurring within sixty days after the date of purchase of residential real property, such ten year period shall be measured from the first assessment roll in which the exemption occurs. If, before the expiration of such ten year period, such exempt property is sold and replaced with other residential real property, such exemption may be granted pursuant to this subdivision for the unexpired portion of the ten year exemption period. Each county, city, town or village may adopt a local law to reduce the maximum exemption allowable in paragraphs (a) and (b) of this subdivision to six thousand dollars, nine thousand dollars and thirty thousand dollars, respectively, or four thousand dollars, six thousand dollars and twenty thousand dollars, respectively. Each county, city, town, or village is also authorized to adopt a local law to increase the maximum exemption allowable in paragraphs (a) and (b) of this subdivision to ten thousand dollars, fifteen thousand dollars and fifty thousand dollars, respectively; twelve thousand dollars, eighteen thousand dollars and sixty thousand dollars, respectively; fourteen thousand dollars, twenty-one thousand dollars and seventy thousand dollars, respectively; sixteen thousand dollars, twenty-four thousand dollars and eighty thousand dollars, respectively; eighteen thousand dollars, twenty-seven thousand dollars and ninety thousand dollars, respectively; twenty thousand dollars, thirty thousand dollars and one hundred thousand dollars, respectively; twenty-two thousand dollars, thirty-three thousand dollars and one hundred ten thousand dollars, respectively; twenty-four thousand dollars, thirty-six thousand dollars and one hundred twenty thousand dollars, respectively. In addition, a county, city, town or village which is a "high-appreciation municipality" as defined in this subparagraph is authorized to adopt a local law to increase the maximum exemption allowable in paragraphs (a) and (b) of this subdivision to twenty-six thousand dollars, thirty-nine thousand dollars and one hundred thirty thousand dollars, respectively; twenty-eight thousand dollars, forty-two thousand dollars and one hundred forty thousand dollars, respectively; thirty thousand dollars, forty-five thousand dollars and one hundred fifty thousand dollars, respectively; thirty-two thousand dollars, forty-eight thousand dollars and one hundred sixty thousand dollars, respectively; thirty-four thousand dollars, fifty-one thousand dollars and one hundred seventy thousand dollars, respectively; thirty-six thousand dollars, fifty-four thousand dollars and one hundred eighty thousand dollars, respectively. For purposes of this subparagraph, a "high-appreciation municipality" means: (A) a special assessing unit that is a city, (B) a county for which the commissioner has established a sales price differential factor for purposes of the STAR exemption authorized by section four hundred twenty-five of this title in three consecutive years, and (C) a city, town or village which is wholly or partly located within such a county.

3. Application for exemption shall be made by the owner, or all of the owners, of the property on a form prescribed by the commissioner. The owner or owners shall file the completed form in the assessor's office on or before the first appropriate taxable status

date. The exemption shall continue in full force and effect for all appropriate subsequent tax years and the owner or owners of the property shall not be required to refile each year. Applicants shall be required to refile on or before the appropriate taxable status date if the percentage of disability percentage increases or decreases or may refile if other changes have occurred which affect qualification for an increased or decreased amount of exemption. Any applicant convicted of willfully making any false statement in the application for such exemption shall be subject to the penalties prescribed in the penal law.

4. Notwithstanding the provisions of this section or any other provision of law, in a city having a population of one million or more, applications for the exemption authorized pursuant to this section shall be considered timely filed if they are filed on or before the fifteenth day of March of the appropriate year.

5. A local law adopted pursuant to this section may be repealed by the governing body of the applicable county, city, town, or village. Such repeal shall occur at least ninety days prior to the taxable status date of such county, city, town, or village.

6. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to any real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to this section, were such person or persons the owner or owners of such real property.

7. (a) For the purposes of this section, title to the portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

(b) Provided that all other eligibility criteria of this section are met, that proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such real property owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

(c) Notwithstanding paragraph (b) of this subdivision, a tenant-stockholder who resides in a dwelling that is subject to the provisions of either article two, four, five or eleven of the private housing finance law shall not be eligible for an exemption pursuant to this section.

(d) Notwithstanding paragraph (b) of this subdivision, real property owned by a cooperative corporation may be exempt from taxation pursuant to this section by a municipality in which such property is located only if the governing body of such municipality, after public hearing, adopts a local law, ordinance or resolution providing therefor.

8. The commissioner shall develop in consultation with the director of the New York state

division of veterans' affairs a listing of documents to be used to establish eligibility under this section, including but not limited to a certificate of release or discharge from active duty also known as a DD-214 form or an Honorable Service Certificate/Report of Causality from the department of defense. Such information shall be made available to each county, city, town or village assessor's office, or congressional chartered veterans service officers who request such information. The listing of acceptable military records shall be made available on the internet websites of the division of veterans' affairs and the office of real property tax services.

## **Blind Annuity Program**

### **Executive Law Article 17, Section 362**

#### **§ 362. Creation of annuity**

##### **1. Payment to veterans.**

a. Any veteran as defined in this article who has been or is hereafter classified by the New York State commission for the visually handicapped as a blind person as defined in section three of chapter four hundred fifteen of the laws of nineteen hundred thirteen, as amended, and continues to be a blind person within the meaning of that section, shall, upon application to the director of the division of veterans' affairs, be paid out of the treasury of the state for such term as such veteran shall be entitled thereto under the provisions of this article, the sum of one thousand dollars annually, plus any applicable annual adjustment, as provided in this section.

b. The entitlement of any veteran to receive the annuity herein provided shall terminate upon his or her ceasing to continue to be a resident of and domiciled in the state, but such entitlement may be reinstated upon application to the director of veterans' affairs, if such veteran shall thereafter resume his or her residence and domicile in the state.

c. The effective date of an award of the annuity to a veteran shall be the date of receipt of the application therefor by the director of veterans' affairs, except that if the application is denied but is granted at a later date upon an application for reconsideration based upon new evidence, the effective date of the award of the annuity to a veteran shall be the date of receipt of the application for reconsideration by the director of veterans' affairs.

##### **2. Payment to widows and widowers of blind veterans.**

a. The unremarried spouse of a veteran who heretofore has died or the unremarried spouse of a veteran dying hereafter, such veteran being at the time of her or his death a recipient of, or eligible for, the benefits above provided, shall, upon application to the director of veterans' affairs, also be paid out of the treasury of the state the sum of one thousand dollars annually, plus any applicable annual adjustment, for such term as such unremarried spouse shall be entitled thereto under the provisions of this article.

b. The entitlement of any widow or widower to receive the annuity herein provided shall terminate upon her or his death or re-marriage or upon her or his ceasing to continue to be a resident of and domiciled in the state of New York, but such entitlement may be reinstated upon application to the director of veterans' affairs, if such widow or widower shall



thereafter resume her or his residence and domicile in the state.

c. The effective date of an award of the annuity to a widow or widower shall be the day after the date of death of the veteran if the application therefor is received within one year from such date of death. If the application is received after the expiration of the first year following the date of the death of the veteran, the effective date of an award of the annuity to a widow or widower shall be the date of receipt of the application by the director of veterans' affairs. If an application is denied but is granted at a later date upon an application for reconsideration based upon new evidence, the effective date of the award of the annuity to a widow or widower shall be the date of receipt of the application for reconsideration by the director of veterans' affairs.

3. Annual adjustment. Commencing in the year two thousand five, and for each year thereafter, the amount of any annuity payable under this section shall be the same amount as the annuity payable in the preceding year plus a percentage adjustment equal to the annual percentage increase, if any, for compensation and pension benefits administered by the United States Department of Veterans Affairs in the previous year. Such percentage increase shall be rounded up to the next highest one-tenth of one percent and shall not be less than one percent nor more than four percent. Commencing in the year two thousand five, the director of veterans' affairs, not later than February first of each year, shall publish by any reasonable means the amount of the annuity as adjusted payable under this section.

#### **Executive Law Article 17, Section 363**

##### **§ 363. Evidence of entitlement**

1. The evidence of such service, blindness, residence and domicile, or of such marriage, widowhood, residence and domicile in each case shall be furnished in the manner and form prescribed by the director of veterans' affairs who shall examine the same.

2. Upon being satisfied that such service was performed, that other facts and statements in the application of such veteran or widow are true and that the said veteran has been classified by the New York state commission for the visually handicapped as a blind person, where such veteran is not receiving or not entitled to receive a benefit from any existing retirement system to which the state is a contributor, unless such veteran shall have become disabled by reason of loss of sight, while engaged in employment entitling him to receive a benefit from any existing retirement system to which the state is a contributor, and as a result of such disability has retired from such employment and is receiving or is entitled to receive a benefit from such retirement system the director of veterans' affairs shall certify to the state comptroller the name and address of such veteran or widow.

3. Thereafter the department of taxation and finance, through the division of finance, on the audit and warrant of the comptroller, shall pay such veteran or widow such sum as is authorized by the provisions of this article in monthly installments for so long as such veteran or widow shall meet the requirements of this article.

#### **Executive Law Article 17, Section 364**

##### **§ 364. Persons who may receive annuity**

1. a. The word "veteran," as used in this article shall be taken to mean and include any person who is a resident of the state of New York, and who has been or may be given an honorable, general or ordinary discharge or any other form of release from such service, except a dishonorable discharge, a bad conduct discharge, an undesirable discharge, a discharge without honor or a discharge for the good of the service, and who (i) was a recipient of the armed forces expeditionary medal, the navy expeditionary medal or the marine corps expeditionary medal for participation in operations in Lebanon from June first, nineteen hundred eighty-three to December first, nineteen hundred eighty-seven, in Grenada from October twenty-third, nineteen hundred eighty-three to November twenty-first, nineteen hundred eighty-three, or in Panama from December twentieth, nineteen hundred eighty-nine to January thirty-first, nineteen hundred ninety, or (ii) served on active duty for ninety days or more in the armed forces of the United States during any one of the following wars or hostilities:

(1) in the Spanish-American war from the twenty-first day of April, eighteen hundred ninety-eight to the eleventh day of April, eighteen hundred ninety-nine, inclusive;

(2) in the Philippine insurrection or the China relief expedition from the eleventh day of April, eighteen hundred ninety-nine to the fourth day of July, nineteen hundred two, inclusive;

(3) in the Mexican border campaign from the ninth day of May, nineteen hundred sixteen, to the fifth day of April, nineteen hundred seventeen, inclusive;

(4) in world war I from the sixth day of April, nineteen hundred seventeen to the eleventh day of November, nineteen hundred eighteen, inclusive;

(5) in world war II from the seventh day of December, nineteen hundred forty-one to the thirty-first day of December, nineteen hundred forty-six, inclusive, or who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions;

(6) in the Korean hostilities from the twenty-seventh day of June, nineteen hundred fifty to the thirty-first day of January, nineteen hundred fifty-five, inclusive;

(7) in the Vietnam conflict from the [fig 1] twenty-eighth day of [fig 2] February, nineteen hundred sixty-one to the seventh day of May, nineteen hundred seventy-five;

(8) in the Persian Gulf conflict from the second day of August, nineteen hundred ninety to the end of such conflict.

b. The word "veteran" shall also mean any person who meets the other requirements of paragraph a of this subdivision, who served on active duty for less than ninety days, if he or she was discharged or released from such service for a service-connected disability or who served for a period of ninety consecutive days or more and such period began or ended during any war or period of hostilities as defined in paragraph a of this subdivision.

c. The term "active duty" as used in this article shall mean full time duty in the armed forces, other than active duty for training; provided, however, that "active duty" shall also include any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated during such period.

2. No annuity shall be paid under this article to or for a person who is in prison in a federal, state or local penal institution as a result of conviction of a felony or misdemeanor for any part of the period beginning sixty-one days after his or her imprisonment begins and ending when his or her imprisonment ends.

3. Where any veteran is disqualified for the annuity for any period solely by reason of the provisions of subdivision two of this section, the director of veterans' affairs shall pay to his wife, if any, the annuity which such veteran would receive for that period but for said subdivision two.

4. In case an unmarried, divorced or widowed veteran or a widow of a deceased annuitant is being furnished hospital treatment, institutional or domiciliary care by the United States or the state, the annuity payable under this article to such veteran or widow may be discontinued after the first day of the seventh calendar month following the month of admission of such veteran or widow for treatment or care. Payment of such annuity shall be resumed if such veteran or widow is discharged from the hospital, institution or home, or if his or her treatment or care therein is otherwise terminated.

5. Where payment of the annuity as hereinbefore authorized is to be made to a mentally incompetent person or a conservatee, such payment may be authorized by the director of veterans' affairs of the state to be paid only to a duly qualified court-appointed committee or conservator, legally vested with the care of such incompetent's person or property or of such conservatee's property, except that in the case of an incompetent annuitant for whom a committee has not been appointed or a person under a substantial impairment within the meaning of the conservatorship provisions of article seventy-seven of the mental hygiene law for whom a conservator has not been appointed and who is hospitalized in a United States veterans' administration hospital or in a hospital under the jurisdiction of the state of New York, the director of veterans' affairs of the state may in his discretion certify payment of the annuity, as hereinbefore authorized, to the manager of such veterans' administration hospital or to the director of such state hospital for the account of the said incompetent or substantially impaired annuitant.

## **New York State Veterans Homes**

### **Public Health Law Article 26-A, Section 2630**

#### **§ 2630. Purpose**

The New York state home for veterans and their dependents at Oxford, the New York state home for veterans in the city of New York, the New York state home for veterans in western New York and the New York home for veterans in the lower-Hudson Valley shall be for the care of aged dependent veterans and their spouses, veterans' mothers and fathers, unremarried surviving spouses, and army nurses.

### **Public Health Law Article 26-A, Section 2631**

#### **§ 2631. Board of visitors; special provision**

The board of visitors of each such home shall consist of nine members appointed from the members of the New York departments of the major organizations of war veterans to which charters have been issued by Acts of Congress or of their women's auxiliaries. The terms of office of such visitors hereafter appointed shall be five years, and they shall be so appointed that the terms of two of the members shall expire on the first day of February of each year, except that the term of but one member shall so expire every fifth year. Appointments shall be so made that there will be at all times four women and five men members of such board.

### **Public Health Law Article 26-A, Section 2632**

#### **§ 2632. Admission to home**

1. Every veteran of the armed forces of the United States, who (i) was separated or discharged under honorable conditions after serving on active duty therein for a period of not less than thirty days, or (ii) was separated or discharged under honorable conditions after serving on active duty therein for a period of not less than thirty days and who was a recipient of the armed forces expeditionary medal, navy expeditionary medal or marine corps expeditionary medal for participation in operations in Lebanon from June first, nineteen hundred eighty-three to December first, nineteen hundred eighty-seven, in Grenada from October twenty-third, nineteen hundred eighty-three to November twenty-first, nineteen hundred eighty-three, or in Panama from December twentieth, nineteen hundred eighty-nine to January thirty-first, nineteen hundred ninety, or in Bosnia and Herzegovina from November twenty-first, nineteen hundred ninety-five to November first, two thousand seven, or was a recipient of the Kosovo campaign medal or (iii) was separated or discharged under honorable conditions after serving on active duty therein for a period of not less than thirty days and who served during the period of actual hostilities of either

(a) the Spanish-American war; or

(b) the incidental insurrection in the Philippines prior to July fourth, nineteen hundred two; or

(c) world war I between April sixth, nineteen hundred seventeen and November eleventh, nineteen hundred eighteen, both inclusive; or

(d) world war II between December seventh, nineteen hundred forty-one and December thirty-first, nineteen hundred forty-six, both inclusive, or who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions; or

(e) Korean conflict between June twenty-seventh, nineteen hundred fifty and January thirty-first, nineteen hundred fifty-five, both inclusive; or

(f) Viet Nam conflict between February twenty-eighth, nineteen hundred sixty-one and May seventh, nineteen hundred seventy-five, both inclusive; or

(g) veterans who served in the United States military and were exposed to radiation during military service in a "radiation-risk activity" defined as participation in the occupation of Hiroshima or Nagasaki, Japan between August sixth, nineteen hundred forty-five through July first, nineteen hundred forty-six; were prisoners of war in Japan during World War II; onsite participation in a test involving the atmospheric detonation of a nuclear device, whether or not the testing nation was the United States; or

(h) in the Persian Gulf conflict from the second day of August, nineteen hundred ninety to the end of such conflict including military service in Operation Enduring Freedom, Operation Iraqi Freedom, Operation New Dawn or Operation Inherent Resolve and was the recipient of the global war on terrorism expeditionary medal or the Iraq campaign medal or the Afghanistan campaign medal; and who was a resident of the state of New York at the time of entry upon such active duty or who shall have been a resident of this state for one year next preceding the application for admission shall be entitled to admission to said home after the approval of the application by the board of visitors, subject to the provisions of this article and to the conditions, limitations and penalties prescribed by the regulations

of the department. Any such veteran or dependent, who otherwise fulfills the requirements set forth in this section, may be admitted directly to the skilled nursing facility or the health related facility provided such veteran or dependent is certified by a physician designated or approved by the department to require the type of care provided by such facilities.

2. The unremarried surviving spouse as such term is defined under section 101 of title thirty-eight of the United States Code of any such veteran, or the unremarried surviving spouse, mother or father of any such member of the armed forces of the United States who died while on active duty, notwithstanding the length of such service, shall be entitled to admission to said home after the approval of the application by the board of visitors, subject to the provisions of this article and to the conditions, limitations and penalties prescribed by the regulations of the department and by the secretary of the United States department of veterans affairs.

3. The spouse, as such term is defined under section 101 of title thirty-eight of the United States Code, of any such veteran, unless such veteran and his or her spouse have been legally separated, shall be entitled to admission to said home after the approval of the application by the board of visitors, subject to the provisions of this article and to the conditions, limitations and penalties prescribed by the regulations of the department and by the secretary of the United States department of veterans affairs.

4. No spouse or unremarried surviving spouse of such a veteran shall be admitted as a resident of said home unless married to such veteran at least one year prior to the date of application.

5. Preference in admission shall be given as follows: first, to veterans accompanied by their spouses based upon severity of illness or disability and need for care; second, to other eligible veterans pursuant to clause (ii) or (iii) of subdivision one of this section based upon severity of illness or disability and need for care and the order of the date of the conflict or operation listed in such clauses; third, to other eligible veterans pursuant to clause (i) of subdivision one of this section based upon severity of illness or disability and need for care; fourth, to spouses and unremarried surviving spouses based upon severity of illness or disability and need for care; fifth, to mothers and fathers based upon severity of illness or disability and need for care.

6. The board of visitors shall require an applicant for admission to such home to file an affidavit of New York state residence and the affidavits of at least two householders in and residents of the county in New York state of which the applicant claims at the time of such application to be a resident; and such affidavits shall, on presentation, be accepted and received as sufficient proof, unless contradicted, of the residence of such applicant in any actions or proceedings against such county in which such residence of such applicant is material.

7. The regulations of the department shall require that each applicant for admission shall furnish a certification of all property of which he or she is possessed and of all sources of income and that, following admission, each resident shall be required to furnish further certifications as to such facts from time to time, but not oftener than at intervals of twelve months, and shall also require the payments by residents of the home from such resources

or income, or both, such amounts in payment on account of the care and maintenance provided by the home as the department shall find to be reasonable.

**Public Health Law Article 26-A, Section 2633**

**§ 2633. Acquisition and application of property**

Subject to the regulations of the department, the board of visitors or the duly appointed treasurer of the homes, as agent of the department, may receive, retain and expend receipts other than state appropriations, any money or other personal property given, bequeathed or entrusted to the board of visitors or duly appointed treasurer, for the purposes for which it is given or bequeathed to the homes or entrusted for safekeeping or, if unaccompanied by conditions or limitations, for any of the purposes of the homes or for the convenience of the residents thereof.

**NYS Civil Service Benefits For Veterans**

**Civil Service Law Article 6, Section 85**

**§ 85. Additional credit allowed veterans in competitive examinations; preference in retention upon abolition of positions**

**1. Definitions.**

(a) The terms "veteran" and "non-disabled veteran" mean a member of the armed forces of the United States who served therein *in time of war*, who was honorably discharged or released under honorable circumstances from such service, who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and who is a resident of the state of New York at the time of application for appointment or promotion or at the time of retention, as the case may be.

(b) The term "disabled veteran" means a veteran who is certified by the United States veterans' administration or a military department as entitled to receive disability payments upon the certification of such veterans' administration or a military department for a disability incurred by him in time of war and in existence at the time of application for appointment or promotion or at the time of retention, as the case may be. Such disability shall be deemed to be in existence at the time of application for appointment or promotion or at the time of retention, as the case may be, if the certificate of such veterans' administration shall state affirmatively that such veteran has been examined by a medical officer of such veterans' administration on a date within one year of either the date of filing application for competitive examination for original appointment or promotion or the date of the establishment of the resulting eligible list or within one year of the time of retention, as the case may be; that at the time of such examination the war-incurred disability described in such certificate was found to exist; and that such disability is rated at ten per centum or more. Such disability shall also be deemed to be in existence at such time if the certificate of such veterans' administration shall state affirmatively that a permanent stabilized condition of disability exists to an extent of ten per centum or more, notwithstanding the fact that such veteran has not been examined by a medical officer of such veterans' administration within one year of either the time of application for appointment or promotion or the date of filing application for competitive examination for original

appointment or promotion, or within one year of the time of retention, as the case may be. The term "disabled veteran" shall also mean:

(1) A veteran who served in world war I, who continued to serve in the armed forces of the United States after the eleventh day of November, nineteen hundred eighteen, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service on or before the second day of July, nineteen hundred twenty-one.

(2) A veteran who served in world war II, who continued to serve in the armed forces of the United States after the second day of September, nineteen hundred forty-five, or who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service on or before the date that world war II is declared terminated.

(3) A veteran who served during hostilities participated in by the military forces of the United States subsequent to June twenty-seventh, nineteen hundred fifty, and who continued to serve in the armed forces of the United States after the thirty-first day of January, nineteen hundred fifty-five, and who is certified, as hereinbefore provided, by the United States veterans' administration as receiving disability payments upon the certification of such veterans' administration for a disability incurred by him in such service.

(c) The term "time of war" shall include the following wars and hostilities for the periods and based upon the evidence herein set forth:

(1) World war I, from the sixth day of April, nineteen hundred seventeen, to and including the eleventh day of November, nineteen hundred eighteen.

(2) World war II, from the seventh day of December, nineteen hundred forty-one, to



and including the thirty-first day of December, nineteen hundred forty-six.

(3) Hostilities participated in by the military forces of the United States, from the twenty-seventh day of June, nineteen hundred fifty, to and including the thirty-first day of January, nineteen hundred fifty-five.

(4) Hostilities participated in by the military forces of the United States, from the [fig 1] twenty-eighth day of [fig 2] February, nineteen hundred sixty-one to the seventh day of May, nineteen hundred seventy-five.

(5) Hostilities participated in by the military forces of the United States in Lebanon, from the first day of June, nineteen hundred eighty-three to the first day of December, nineteen hundred eighty-seven, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.

(6) Hostilities participated in by the military forces of the United States in Grenada, from the twenty-third day of October, nineteen hundred eighty-three to the twenty-first day of November, nineteen hundred eighty-three, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.

(7) Hostilities participated in by the military forces of the United States in Panama, from the twentieth day of December, nineteen hundred eighty-nine to the thirty-first day of January, nineteen hundred ninety, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal.

(8) Hostilities participated in by the military forces of the United States in the Persian Gulf, from the second day of August, nineteen hundred ninety to the end of such hostilities.

(d) The term "time of application for original appointment or promotion" shall mean the date of the establishment of an eligible list resulting from a competitive examination for original appointment or promotion, as the case may be, which date shall be the date on which the term of such eligible list commences.

(e) The term "time of retention" shall mean the time of abolition or elimination of positions.

## 2. Additional credits in competitive examinations for original appointment or promotion.

(a) On all eligible lists resulting from competitive examinations, the names of eligibles shall be entered in the order of their respective final earned ratings on examination, with the name of the eligible with the highest final earned rating at the head of such list, provided, however, that for the purpose of determining final earned ratings,

(1) Disabled veterans shall be entitled to receive ten points additional in a competitive examination for original appointment and five points additional credit in a competitive examination for promotion, and

(2) Non-disabled veterans shall be entitled to receive five points additional credit in a competitive examination for original appointment and two and one-half points additional credit in a competitive examination for promotion.

(b) Such additional credit shall be added to the final earned rating of such disabled veteran or non-disabled veteran, as the case may be, after he or she has qualified in the competitive examination and shall be granted only at the time of establishment of the resulting eligible list.

3. Application for additional credit; proof of eligibility; establishment of eligible list. Any candidate, believing himself entitled to additional credit in a competitive examination as provided herein, may make application for such additional credit at any time between the date of his application for examination and the date of the establishment of the resulting eligible list. Such candidates shall be allowed a period of not less than two months from the date of the filing of his application for examination in which to establish by appropriate documentary proof his eligibility to receive additional credit under this section. At any time after two months have elapsed since the final date for filing applications for a competitive examination for original appointment or promotion, the eligible list resulting from such examination may be established, notwithstanding the fact that a veteran or disabled veteran who has applied for additional credit has failed to establish his eligibility to receive such additional credit. A candidate who fails to establish, by appropriate documentary proof, his eligibility to receive additional credit by the time an eligible list is established shall not thereafter be granted additional credit on such eligible list.

4. Use of additional credit.

(a) Except as herein otherwise provided, no person who has received a permanent original appointment or a permanent promotion in the civil service of the state or of any city or civil division thereof from an eligible list on which he was allowed the additional credit granted by this section, either as a veteran or disabled veteran, shall thereafter be entitled to any additional credit under this section either as a veteran or a disabled veteran.

(b) Where, at the time of establishment of an eligible list, the position of a veteran or disabled veteran on such list has not been affected by the addition of credits granted under this section, the appointment or promotion of such veteran or disabled veteran, as the case may be, from such eligible list shall not be deemed to have been made from an eligible list on which he was allowed the additional credit granted by this section.

(c) If, at the time of appointment from an eligible list, a veteran or disabled veteran is in the same relative standing among the eligibles who are willing to accept appointment as if he had not been granted the additional credits provided by this section, his appointment from among such eligibles shall not be deemed to have been made from an eligible list on which he was allowed such additional credits.

(d) Where a veteran or disabled veteran has been originally appointed or promoted from an eligible list on which he was allowed additional credit, but such appointment or promotion is thereafter terminated either at the end of the probationary term or by resignation at or before the end of the probationary term, he shall not be deemed to have been appointed or promoted, as the case may be, from an eligible list on which he was allowed additional credit, and such appointment or promotion shall not affect his eligibility for additional credit in other examinations.

5. Withdrawal of application; election to relinquish additional credit. An application for additional credit in a competitive examination under this section may be withdrawn by the applicant at any time prior to the establishment of the resulting eligible list. At any time during the term of existence of an eligible list resulting from a competitive examination in which a veteran or disabled veteran has received the additional credit granted by this section, such veteran or disabled veteran may elect, prior to permanent original

appointment or permanent promotion, to relinquish the additional credit theretofore granted to him and accept the lower position on such eligible list to which he would otherwise have been entitled; provided, however, that such election shall thereafter be irrevocable. Such election shall be in writing and signed by the veteran or disabled veteran, and transmitted to the state civil service department or the appropriate municipal civil service commission.

6. Roster. The state civil service department and each municipal commission shall establish and maintain in its office a roster of all veterans and disabled veterans appointed or promoted as a result of additional credits granted by this section to positions under its jurisdiction. The appointment or promotion of a veteran or disabled veteran as a result of additional credits shall be void if such veteran or disabled veteran, prior to such appointment or promotion, had been appointed or promoted as a result of additional credits granted by this section.

7. Preference in retention upon the abolition of positions. In the event of the abolition or elimination of any position in the civil service for which eligible lists are established or any position the incumbent of which is encompassed by section eighty-a of this chapter, any suspension, demotion or displacement shall be made in the inverse order of the date of original appointment in the service subject to the following conditions: (1) blind employees shall be granted absolute preference in retention; (2) the date of such original appointment for disabled veterans shall be deemed to be sixty months earlier than the actual date, determined in accordance with section thirty of the general construction law; (3) the date of such original appointment for non-disabled veterans shall be deemed to be thirty months earlier than the actual date, determined in accordance with section thirty of the general construction law; (4) no permanent competitive class employee subject to the jurisdiction of the civil service commission of the city of New York who receives an injury in the line of duty, as defined in this paragraph, which requires immediate hospitalization, and which is not compensable through workmen's compensation may be suspended, demoted or displaced pursuant to section eighty of this chapter within three months of the date of his confinement, provided that medical authorities approved by such commission shall certify that the employee is not able to perform the duties of his position; provided further, that such three-month period may be extended by such commission for additional periods not to exceed one year each upon the certification of medical authorities selected by such commission that the employee is, as a result of his injury, still not able to perform the duties of his position. An injury in the line of duty, as used herein, shall be construed to mean an injury which is incurred as a direct result of the lawful performance of the duties of the position. In determining whether an injury was received in the line of duty, such commission shall require the head of the agency by which the employee is employed to certify that the injury was received as a direct result of the lawful performance of the employee's duties; and (5) the spouse of a veteran with one hundred percent service connected disability shall be deemed to be sixty months earlier than the actual date, determined in accordance with section thirty of the general construction law, provided, the spouse is domiciled with the veteran-spouse and is the head of the household. This section shall not be construed as conferring any additional benefit upon such employee other than a preference in retention. Such employee shall be subject to transfer upon the abolition of his function within his agency or department.

7-a. For the purpose of subdivision seven of this section, the terms "date of original appointment" and "date of original appointment in the service" shall mean, for persons

subject to subdivisions one-a and one-c of section eighty of this chapter, the date of original appointment on a permanent basis in the grade or title in the service of the governmental jurisdiction in which such abolition or reduction occurs.

8. Penalty for denial of preference in retention. A refusal to allow the preference in retention provided for in this section to any veteran or disabled veteran, or a reduction of his compensation intended to bring about his resignation shall be deemed a misdemeanor, and any such veteran or disabled veteran shall have a right of action therefor in any court of competent jurisdiction for damages and for righting the wrong.

#### **Civil Service Law Article 6, Section 86**

§ 86. Transfer of veterans or exempt volunteer firemen upon abolition of positions

If the position in the non-competitive or in the labor class held by any honorably discharged veteran of the armed forces of the United States who served therein in time of war as defined in section eighty-five of this chapter, or by an exempt volunteer fireman as defined in the general municipal law, shall become unnecessary or be abolished for reasons of economy or otherwise, the honorably discharged veteran or exempt volunteer fireman holding such position shall not be discharged from the public service but shall be transferred to a similar position wherein a vacancy exists, and shall receive the same compensation therein. It is hereby made the duty of all persons clothed with the power of appointment to make such transfer effective. The right to transfer herein conferred shall continue for a period of one year following the date of abolition of the position, and may be exercised only where a vacancy exists in an appropriate position to which transfer may be made at the time of demand for transfer. Where the positions of more than one such veteran or exempt volunteer fireman are abolished and a lesser number of vacancies in similar positions exist to which transfer may be made, the veterans or exempt volunteer firemen whose positions are abolished shall be entitled to transfer to such vacancies in the order of their original appointment in the service. Nothing in this section shall be construed to apply to the position of private secretary, cashier or deputy of any official or department. This section shall have no application to persons encompassed by section eighty-a of this chapter.

#### **Civil Service Law Article 6, Section 87**

§ 87. Prohibition against disqualification on account of age or disability

A veteran or disabled veteran shall not be disqualified from holding any position in the civil service on account of age, except for positions for which age limitations are specifically authorized or prescribed by law, provided such age does not render him incompetent to perform the duties of the position applied for. A disabled veteran shall not be disqualified from holding any position in the civil service by reason of a war-incurred disability, provided such disability does not render him incompetent to perform the duties of the position applied for.

#### **Civil Service Law Article 6, Section 88**

§ 88. Prohibition against discrimination against public employees serving in the armed forces

No public employer, as defined in subdivision six of section two hundred one of this chapter, shall deny employment, re-employment or any benefit of employment to any person or employee based on prospective, current or past enlistment, appointment or commission with the armed forces of the United States. Such person or employee shall be afforded full enforcement rights under the laws of this state and of the United States, including the Federal Uniformed Services Employment and Reemployment Rights Act of 1994.

**Civil Service Law Article 4, Title A, Section 55-c**

§ 55-c. Employment of veterans with disabilities by the state

1. The commission may determine up to five hundred positions with duties such as can be performed by disabled veterans and veterans with disabilities who are found otherwise qualified to perform satisfactorily the duties of any such position. Upon such determination, the said positions shall be classified in the noncompetitive class, and may be filled only by veterans of the armed forces of the United States who served therein during time of war, as defined in paragraph (c) of subdivision one of section eighty-five of this chapter, and (a) who establish by appropriate documentary evidence that they are disabled veterans, as defined in paragraph (b) of subdivision one of section eighty-five of this chapter, or (b) by those veterans, as defined in paragraph (a) of subdivision one of section eighty-five of this chapter, who shall have been certified by the employee health service of the department as being disabled but capable of performing the duties of said positions. Priority in certification and referral of both such disabled veterans and certified disabled but capable veterans shall be given to those veterans who received a wound in combat, as documented by the awarding of the purple heart, as authorized by the United States department of defense, and that wound is the cause of, or a substantially contributing factor to, the degree of impairment, who otherwise meet the requirements of this section. The number of veterans appointed pursuant to this section shall not exceed five hundred.

2. Those employees hired under subdivision one of this section, shall be afforded the same opportunity to take promotional examinations as provided to employees in the competitive class.

**Military Law Article 11, Section 243-b**

§ 243-b. Civil service examinations by military personnel

1. Notwithstanding any other provision of this chapter or any other law, any member of the armed forces of the United States of America who having duly filed an application to compete in a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions and who due to active military duty is deprived of the opportunity to compete in such examination shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

2. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law or any member of the armed forces of

the United States who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty, pursuant to 10 USC 101 (d) (1), and is deprived of the opportunity to compete in such examination due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty, pursuant to 10 USC 101 (d) (1), shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

3. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law or any member of the armed forces of the United States who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty pursuant to 10 USC 101 (d) (1), and who returns from such duty prior to the administration of such competitive examination shall be granted a waiver of the application requirement and allowed to compete in such upcoming examination.

### **NYS Military Service Credits Pension Buyback**

#### **Retirement and Social Security Law Article 20, Section 1000**

##### **§ 1000. Military service credit**

Notwithstanding any law to the contrary, a member of a public retirement system of the state, as defined in subdivision twenty-three of section five hundred one of this chapter, shall be eligible for credit for military service as hereinafter provided:

1. A member, upon application to such retirement system, may obtain a total not to exceed three years of service credit for up to three years of military duty, as defined in section two hundred forty-three of the military law, if the member was honorably discharged from the military.

2. A member must have at least five years of credited service (not including service granted hereunder) to be eligible to receive credit under this section.

3. To obtain such credit, a member shall pay such retirement system, for deposit in the fund used to accumulate employer contributions, a sum equal to the product of the number of years of military service being claimed and three percent of such member's compensation earned during the twelve months of credited service immediately preceding the date that the member made application for credit pursuant to this section. If permitted by rule or regulation of the applicable retirement system, the member may pay such member costs by payroll deduction for a period which shall not exceed the time period of military service to be credited pursuant to this section. In the event the member leaves the employer payroll prior to completion of payment, he or she shall forward all remaining required payments to

the appropriate retirement system prior to the effective date of retirement. If the full amount of such member costs is not paid to the appropriate retirement system prior to the member's retirement, the amount of service credited shall be proportional to the total amount of the payments made prior to retirement.

4. In no event shall the credit granted pursuant to this section, when added to credit granted for military service with any retirement system of this state pursuant to this or any other provision of law, exceed a total of three years.

5. To be eligible to receive credit for military service under this section, a member must make application for such credit before the effective date of retirement.

6. All costs for service credited to a member pursuant to this section, other than the member costs set forth in subdivision three, shall be paid by the state and all employers which participate in the retirement system in which such member is granted credit.

7. A member who has purchased military service credit pursuant to section two hundred forty-four-a of the military law shall be entitled to a refund of the difference between the amount paid by the member for such purchase and the amount that would be payable if service had been purchased pursuant to this section.

8. Notwithstanding any other provision of law, in the event of death prior to retirement, amounts paid by the member for the purchase of military service credit pursuant to this section shall be refunded, with interest, to the extent the military service purchased with such amounts does not produce a greater death benefit than would have been payable had the member not purchased such credit. Notwithstanding any other provision of law, in the event of retirement, amounts paid by the member for the purchase of military service credit pursuant to this section shall be refunded, with interest, to the extent the military service purchased with such amounts does not produce a greater retirement allowance than would have been payable had the member not purchased such credit.

9. Anything to the contrary in subdivision three of this section notwithstanding, to obtain such credit, a member who first joins a public retirement system of the state on or after April first, two thousand twelve shall pay such retirement system, for deposit in the fund used to accumulate employer contributions, a sum equal to the product of the number of years of military service being claimed and six percent of such member's compensation earned during the twelve months of credited service immediately preceding the date that the member made application for credit pursuant to this section.

### **Effect of Military Service on Child Custody Orders**

#### **Domestic Relations Law, Section 240, Subdivision 1 (a-1)**

(a-2) Military service by parent; effect on child custody orders.

(1) During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, any

orders issued pursuant to this section, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would materially affect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service, shall be subject to review pursuant to subparagraph three of this paragraph. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

(2) During such period, the court may enter an order to modify custody if there is clear and convincing evidence that the modification is in the best interests of the child. An attorney for the child shall be appointed in all cases where a modification is sought during such military service. Such order shall be subject to review pursuant to subparagraph three of this paragraph.

When entering an order pursuant to this section, the court *shall* consider and provide for, if feasible and if in the best interests of the child, contact between the military service member and his or her child, including, but not limited to, electronic communication by e-mail, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best interests of the child when establishing a parenting schedule, including visiting and other contact. For such purposes, a "leave from military service" shall be a period of not more than three months.

(3) Unless the parties have otherwise stipulated or agreed, if an order is issued pursuant to this paragraph, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances. Upon the request of either parent, the court shall determine on the basis of the child's best interests whether the custody judgment or order previously in effect should be modified.

(4) This paragraph shall not apply to assignments to permanent duty stations or permanent changes of station.

## **NYS Soldiers & Sailors Civil Relief Act**

### **Military Law Article 13, Section 301**

#### **§ 301. Definitions**

As used in this article:

1. The term "military service" means duty by a person, male or female, in the active military service of the United States as defined in section one of this chapter and active duty in the military service of the state pursuant to an order of the governor issued pursuant to section six or seven of this chapter.

2. The term "person" when used herein with reference to the holder of any right alleged to exist against a person in military service, or against a person secondarily liable under



such right, shall include individuals, partnerships, corporations, and any other forms of business association.

3. The term "court" as used herein, shall include any state court of competent jurisdiction, whether or not a court of record.

#### **Military Law Article 13, Section 302**

§ 302. Stay, et cetera, to persons secondarily liable

1. Whenever, pursuant to any of the provisions of this article, the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment or decree, or the performance of any act, may be stayed, postponed or suspended, such stay, postponement or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers and others subject to the obligation or liability, the performance or enforcement of which is stayed, postponed or suspended.

2. When a judgment or decree is vacated or set aside, in whole or in part, as provided in this article, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorsers, accommodation maker or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

3. Nothing contained in this article shall prevent a waiver in writing of the benefits afforded by subdivisions one and two of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability except that after the date of enactment of this subdivision no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who, subsequent to the execution of such waiver becomes a person in military service.

#### **Military Law Article 13, Section 303**

§ 303. Representation; opening judgment; default

1. In any action or proceeding in which a person in military service is a party, if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment, should the judgment be thereafter set aside in whole or in part, may be required and an order made to protect the rights of such person. But no attorney appointed under this act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

2. If any judgment shall be rendered in any action or proceeding against any person in military service during the period of such service, or within thirty days thereafter, and it

appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or proceeding, or to some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

3. Where a default judgment may properly be rendered in any action or proceeding in any court, the court shall not require the attorney for the plaintiff or petitioner to submit an affidavit or affirmation that the defendant or respondent is not in military service, provided that the court may impose such requirement where authorized by federal law. For purposes of this subdivision, the term "military service" shall have the meaning ascribed by the provisions of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

#### **Military Law Article 13, Section 304**

§ 304. Proceedings to be stayed unless interest unaffected by military service

At any stage thereof, any action or proceeding in any court or in any adjudicatory or licensing proceeding before any state agency, including any public benefit corporation or public authority, or any political subdivision of the state, in which a person in military service is involved as a party, during the period of such service or within sixty days thereafter may, in the discretion of the court or adjudicatory or licensing agency before which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court or adjudicatory or licensing agency, the ability of plaintiff to prosecute the action, or the defendant to conduct his defense, or in any adjudicatory or licensing proceeding the ability of the party to represent his interest, is not materially affected by reason of his military service.

#### **Military Law Article 13, Section 305**

§ 305. Relief against fines and penalties, et cetera

When an action for compliance with the terms of any contract is stayed pursuant to this act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such non-performance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred, and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

### **Military Law Article 13, Section 306**

#### **§ 306. Actions against persons in service**

In any action or proceeding commenced in any court or in any adjudicatory or licensing proceeding before any state agency, including any public benefit corporation or public authority, or any political subdivision of the state, against a person in military service: before or during the period of such service, or within sixty days thereafter, the court or adjudicatory or licensing agency may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court or adjudicatory or licensing agency the ability of the party to comply with the judgment or order entered or sought is not materially affected by reason of his military service:

1. Stay the execution of any judgment or order entered against such person, as provided in this act; and
2. Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this act.

### **Military Law Article 13, Section 307**

#### **§ 307. Continuance of stay, et cetera**

Any stay of any action, proceeding, attachment, or execution ordered by any court or adjudicatory or licensing agency under the provisions of this act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court or adjudicatory or licensing agency may fix or otherwise determine. Where the person in military service is a codefendant with others the plaintiff may nevertheless, by leave of court, proceed against the others.

### **Military Law Article 13, Section 308**

#### **§ 308. Statutes of limitations and statutes of a similar nature; time of military service not included**

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation or order for the bringing of any action or proceeding in any court, board, bureau, commission, department or other agency of government of this state or any of its governmental subdivisions by or against any person in military service, or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such an action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of this act be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment.

**Military Law Article 13, Section 308-a**

Notwithstanding any provision of general, special or local law, code or ordinance, or rule or regulation to the contrary, no person in military service, as defined in section three hundred one of this article, who was licensed, registered or certified to engage in a profession or occupation prior to entering into military service, shall be required to complete the continuing education requirements for such profession or occupation for any entire licensing, registration or certification period during which such military service occurs, and where such military service is partially within a licensing, registration or certification period, such continuing education requirements shall be reduced proportionately so that such individual is not required to complete such requirements while in military service.

**Military Law Article 13, Section 308-b**

§ 308-b. Extension of license, certificate or registration

Notwithstanding any other provision of general, special or local law, code or ordinance, or rule or regulation to the contrary, military personnel serving on active duty, who were licensed, certified or registered to engage in a profession or occupation prior to being called to active duty, and whose license, certificate or registration shall expire during such period of active duty, shall have such license, certificate or registration automatically extended for the period of active duty and for twelve months after such military personnel have been released from active duty, provided that with regard to professions subject to title VIII of the education law, this section shall not apply to limited permits or other credentials issued for a period of two months or less and shall not extend the term of a limited permit that expires for reasons other than the passage of time, including but not limited to failure on a licensure examination, and further provided that this section shall not be construed to permit any individual whose authority to engage in a profession or occupation has been revoked or suspended to engage in such profession or occupation.

**Military Law Article 13, Section 309**

§ 309. Evictions; restraint

1. No eviction or distress shall be made during the period of military service in respect of any premises occupied chiefly for dwelling purposes by a person in military service or the spouse, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in any action or proceeding affecting the right of possession.
2. On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of military service, stay the proceedings for not longer than six months, as provided in this article, or it may make such other order as may be just.
3. Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subdivision one of this section, or attempts so to do, shall be guilty of a

misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.

### **Military Law Article 13, Section 310**

#### **§ 310. Liability for rent accruing after induction; termination of lease**

1. The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes by such person or by him and his dependents.

The provisions of this section shall also apply to any lease covering premises occupied for dwelling purposes where such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service where such lease was also executed by or on the behalf of the spouse of such a person.

2. Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by a lessee at any time following the date of the beginning of such military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subdivision shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

3. Any person who shall knowingly seize, hold or detain the personal effects, clothing, furniture or other property of any person who has lawfully terminated a lease covered by this section or the spouse or dependent of any such person, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.

### **Military Law Article 13, Section 311**

#### **§ 311. Installment purchases**

1. No person who has received, or whose assignor has received, under a contract for the

purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price or a deposit or installment under the contract, lease or bailment from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction; provided, that nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession, retention, foreclosure, sale or taking possession of property purchased or received or which is security for any obligation under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned.

2. Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subdivision one hereof or attempt so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both.

3. Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, except as provided in section three hundred and thirteen, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this act except that such stay under this section may be ordered for the period of military service and six months thereafter or any part of such period, unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties.

#### **Military Law Article 13, Section 311-a**

##### **§ 311-a. Termination of motor vehicle lease contracts**

1. The provisions of this section shall apply to every lease of a motor vehicle for personal, professional, business, agricultural or similar purposes in any case in which (a) such lease was executed by or on behalf of a person who, after the execution of such lease, entered active military service, and (b) the motor vehicle so leased has been used for such purposes, or for a combination of such purposes by such person or his or her legal dependents.

The provision of this section shall also apply to any lease covering a motor vehicle used for personal purposes where such lease was executed by or on the behalf of a person, who, after the execution of such lease, entered active military service where such lease was also executed by or on the behalf of the spouse of such a person.

2. All leases described in subdivision one of this section may be terminated by notice in writing delivered to the lessor or to the lessor's agent by a lessee at any time following the

date of the beginning of such active military service. Delivery of such notice shall be accomplished by certified mail duly addressed to the lessor or to the lessor's agent. Termination of any such lease providing for monthly lease payments shall not be effective until: (a) thirty days after the first date on which the next lease payment is due and payable subsequent to the date when such notice is delivered; or (b) the motor vehicle subject to the lease is returned to the custody or the control of the lessor, whichever is later. In the case of all motor vehicle leases, any unpaid lease payments for a period preceding termination shall be proratably computed and any lease payments made in advance for a period succeeding termination shall be refunded by the lessor. Upon application by the lessor to a court of competent jurisdiction prior to the termination period provided for in the notice, any relief granted in this subdivision shall be subject to such modifications or restrictions as in the opinion of such court may be appropriate in the interest of justice.

#### **Military Law Article 13, Section 311-b**

##### **§ 311-b. Cancellation without penalty of certain additional rental contracts**

1. The provision of this section shall apply to any rental contracts in which (a) such a contract was executed by or on the behalf of a person, who, after the execution of such contract, entered active military service, and (b) where such entry into military service now renders it impossible for such person to abide by the terms and conditions of the rental contract.
2. A person who enters into a rental contract for goods or services not otherwise addressed by the provisions of this article, who enters into active military service subsequent to the execution of such contract, and where his or her military activation causes it to be impossible for him or her to abide by the terms and conditions of the rental contract, is entitled to cancel such contract at no penalty and with a full refund of any moneys which may have been placed on deposit.
3. Any such contract may be terminated by notice in writing delivered to the contractor by such person in active military service canceling his or her rental contract within one week of his or her receipt of orders to report for military service, and such notice shall include a copy of the orders in question. Delivery of such notice shall be accomplished by certified mail duly addressed to the contractor.

#### **Military Law Article 13, Section 312**

##### **§ 312. Mortgages**

1. The provisions of this section shall apply only to obligation and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of his military service and still so owned by him which obligations originated prior to such person's period of military service.
2. In any proceeding commenced in any court during the period of military service to

enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, except as hereinafter provided in this act, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service

(a) stay the proceedings as provided in this act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

3. No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made during the period of military service, or within <1> six months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court.

4. Any person who shall knowingly cause to be made any sale, foreclosure or seizure of property defined as invalid by subdivision three hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both.

#### **Military Law Article 13, Section 313**

§ 313. Settlement of cases involving stayed proceeding in foreclosure or repossession of personal property

Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this act, the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.

#### **Military Law Article 13, Section 314**

§ 314. Taxes; taxes on real property, et cetera

1. The provisions of this section shall apply when any taxes or assessments, whether general or special, other than taxes on income, whether falling due prior or during the period of military service in respect of personal property, money or credits or real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service, or his dependents, at the commencement of his period of military service and still



so occupied by his dependents or employees, are not paid.

2. No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this act, for a period extending not more than six months after the termination of the period of military service of such person.

3. When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of the state, or any political subdivision thereof, for such redemption.

4. (a) Except as provided in paragraph (b) of this subdivision, whenever<1> any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum from the date when such tax first became a lien, and no other penalty or interest shall be incurred by reason of such nonpayment, whether such penalty or interest shall have accrued prior or shall accrue subsequent to the commencement of the period of military service of such person. Any lien for such unpaid taxes or assessment shall also include such interest thereon.

(b) A municipal corporation is hereby authorized and empowered to adopt a local law or, in the case of a school district, a resolution providing that the rate of interest pursuant to this section on unpaid taxes or assessment shall be at a rate less than six per centum per annum.

#### **Military Law Article 13, Section 315**

##### **§ 315. Taxes; income taxes**

The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, shall accrue for such period of deferment, by reason of such non-payment. The running of any statute of limitations against collection of such tax, by distraint or otherwise, shall be suspended for the period of military service, of any individual, the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the termination of his period of military service.

### **Military Law Article 13, Section 316**

#### **§ 316. Policies of insurance; policies not to lapse or be forfeited**

1. No policy which insures the life of a member of a reserve component of the armed forces of the United States, including the National Guard, who is called to active duty, or no policy which has been brought within the benefits of the federal "soldiers' and sailors' civil relief act" shall lapse or be forfeited for the nonpayment of premium during the period of such service, or during two years after the expiration of such period; provided that any such policy has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, provided that in no case shall this prohibition extend for more than one year after this article ceases to be in force.

2. For the purposes of this section, the term "policy" shall include any contract of life insurance as defined in paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal benefit society as defined in subsection (a) of section four thousand five hundred one of the insurance law. In no case, however, shall the term "policy" include insurance exceeding a total face value of one hundred thousand dollars whether in one or more companies, but shall not include a policy insured under Servicemen's Group Life Insurance. The term "premium" shall include membership dues or assessments in such society, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term "insured" shall include any person who is the holder of a policy as defined in this section; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined herein.

3. No individual accident and health insurance policy, defined in paragraph three of subsection (a) of section one thousand one hundred thirteen of the insurance law, which policy insures a member of the organized militia of the state, and has not lapsed for the non-payment of premiums before the commencement of a period of active duty in the military service of the state of New York by such member, pursuant to an order of the governor issued under the authority of section six or seven of this chapter, shall lapse or be forfeited for the non-payment of premiums during a period of sixty days from the date that said member begins such active duty provided the insurer is furnished with written notice of said duty within thirty days after the commencement thereof. An insurer shall have the right to deduct the amount of due and unpaid premiums from any benefit that may become payable as a result of this subdivision.

### **Military Law Article 13, Section 317**

#### **§ 317. Reemployment in private industry**

1. In the case of any person who, in order to perform military service, has left or leaves a position, other than a temporary position, in the employ of any employer, and who

(a) receives a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia;

(b) is still qualified to perform the duties of such position; and

(c) makes application for reemployment within ninety days after he is relieved from such service, if such position was in the employ of a private employer, such employer shall restore such person to such position, or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

2. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who, in order to participate in assemblies for drill or other equivalent training, reserve duty training, instruction or duties, or annual full-time training duty, active duty for training or other annual training pursuant to any law of the United States or section forty-six of this chapter or the regulations issued thereunder, or in order to attend service schools conducted by the armed forces of the United States, temporarily leaves or has left his position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of such position, makes application for reemployment within ten days after completion of such temporary period of service.

2-a. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who, in order to perform initial full-time training duty or initial active duty for training with or in an armed force of the United States under the provisions of this chapter or the laws of the United States or both, temporarily leaves or has left his position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of such position, makes application for re-employment within sixty days after completion of such period of full-time training duty or active duty for training.

3. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who is or becomes a member of the organized militia or of a reserve component of the armed forces of the United States and who, because of such membership is discharged by his employer or whose employment is suspended by his employer because of such membership and who, being qualified to perform the duties of such position, makes application for reemployment or termination of the period of his suspension within ten days after such discharge or suspension. These benefits, rights and privileges are not applicable to persons participating in routine reserve officer training corps training except when performing advanced training duty as a member of a reserve component of the armed forces.

4. Any person who is restored to a position in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of military service, temporary service under subdivision two or subdivision two-a hereof, or of discharge or suspension under subdivision three hereof, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person entered the military service or commenced such temporary service or was so discharged or suspended, and shall not be discharged from such position without cause, within one year after such restoration.

5. In case any private employer fails or refuses to comply with the provisions of this section, the supreme court of the state within the county in which such private employer maintains a place of business, shall have the power, upon the filing of a motion, petition or other appropriate pleading, by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and may, as an incident thereto, compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case, and shall advance it on the calendar. Any person claiming to be entitled to the benefits of the provisions of this section may appear and be represented by counsel, or, upon application to the attorney general of the state, may request that the attorney general appear and act on his behalf. If the attorney general is reasonably satisfied that the person so applying is entitled to such benefits, he shall appear and act as attorney for such person in the amicable adjustment of the claim, or in the filing of any motion, petition or other appropriate pleading and the prosecution thereof. In the hearing and determination of such applications under this section no fees or court costs shall be assessed against a person so applying for such benefits.

#### **Military Law Article 13, Section 318**

##### **§ 318. Policy of the state**

1. It is hereby declared to be the policy of the state that citizens and residents of the state should not be discriminated against because they are subject to military duty pursuant to this chapter or the laws of the United States or both; and that persons doing business in the state should not refuse to employ such persons because they are so subject to military duty.

2. (a) No person shall solicit, require, demand or otherwise request that a person waive any of his or her rights under this article, whether existing at that time or thereafter to accrue.

(b) Any person who shall knowingly violate paragraph (a) of this subdivision shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both such imprisonment and fine, and shall be further subject to a civil penalty in an amount not to exceed five thousand dollars for each occurrence. Such penalty may be recovered in an action brought by the attorney general in any court of competent jurisdiction.

(c) Any waiver entered into in violation of this subdivision shall not be deemed to be binding on any person in military service who executed such waiver.

#### **Military Law Article 13, Section 319**

##### **§ 319. Evasive transfers of interest**

Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this act been transferred or acquired with intent to delay the just enforcement

of such right by taking advantage of this act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this act to the contrary notwithstanding.

#### **Military Law Article 13, Section 321**

##### **§ 321. Certificates of service**

1. In any proceeding under this act a certificate executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia shall, when produced, be prima facie evidence of the facts therein certified and of the authority of the signer to issue the same.

2. When a person in military service has been reported missing he shall be presumed to continue in such service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or proved by the applicable force of the armed forces of the United States or of the organized militia, or until such death is proved by a court of competent jurisdiction; provided, that no period herein limited which begins or ends with the death of such person shall be extended beyond a period of six months after the time when this act ceases to be in force.

#### **Military Law Article 13, Section 322**

##### **§ 322. Interlocutory orders**

Any interlocutory order made by any court under the provisions of this act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require.

#### **Military Law Article 13, Section 323**

##### **§ 323. Further relief**

1. A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a

period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of the termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

2. When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted.

#### **Military Law Article 13, Section 323-a**

##### **§ 323-a. Maximum rate of interest**

No obligation or liability bearing interest at a rate in excess of six percent per year incurred by a person in active military service in the armed forces of the United States or in active military service of the organized militia of the state before that person's entry into such service shall, during any part of the period active military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of six percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees and any other charges (except bona fide insurance) with respect to such obligation or liability.

#### **Military Law Article 13, Section 323-b**

##### **§ 323-b. Filing fees waiver; civil actions**

In any civil action or proceeding commenced in any court by a person who is an active member of the force of the organized militia, as defined by subdivision nine of section one of this chapter, where the dispute or controversy is related to such person's service in <1> the organized militia or the reserves, and the claims are based in whole or in part on this chapter, or on the human rights law relating to military status, or on title 38 or title 50 of

the United States code, all court costs or filing fees for the commencement of the civil action or proceeding shall be waived.

**Military Law Article 13, Section 324**

§ 324. Separability

If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included.

**Military Law Article 13, Section 325**

§ 325. Inconsistent provisions in other acts

Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling.

**Military Law Article 13, Section 326**

§ 326. Article thirteen of military law, added by laws of nineteen hundred forty-one, chapter six hundred eighty-six

Wherever in any section or provision of Article thirteen of the military law, added by laws of nineteen hundred forty-one, chapter six hundred eighty-six, as last amended by laws of nineteen hundred forty-seven, chapter three hundred fifty-six, a proceeding, remedy, privilege, stay, limitation, accounting or other transaction has been authorized or provided with respect to military service performed prior to April first, nineteen hundred forty-eight, such section or provision shall be deemed to continue in full force and effect so long as may be necessary for the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting or other transaction.

**Military Law Article 13, Section 327**

§ 327. Duration of the emergency

This act shall remain in force and effect until repealed or otherwise terminated by subsequent act of the legislature

## **New York State Veterans Treatment Courts or Tracks**

- Erie County (opened in 2008)
  - Monroe County (2009)
  - Kings County (2010)
  - Queens County (2010)
- Albany County (2010) (Veterans Track)
  - Suffolk County (2011)
- Elmira City (2011) (Veterans Track)
- Sullivan County (2011) (Veterans Track)
- Albany County (2011) (Veterans Track)
  - Nassau County (2011)
- Columbia County (2011) (Veterans Track)
  - Auburn City (2011) (Veterans Track)
  - Batavia City (2011) (Veterans Track)
  - Troy City (2011) (Veterans Track)
- Rensselaer County (2011) (Veterans Track)
  - Yonkers City (2012)
  - Newburgh City (2012)
  - Jamestown City (2012)
  - Ontario County (2013)



- Essex County (2013)
- Bronx County (2013)
- East End Veterans Treatment Court (Long Island) (2014)
- Greene County (2014)
- Chemung County (Veterans Track) (2014)
- Broome County (2015)
- Kings County Misdemeanor Veterans Treatment Court (2015)
- New York County (Manhattan) (2016)

\*Information provided by the New York State Office of Court Administration

\*\*Richmond County plans to open a new Veterans Treatment Court in fall 2016.

## **"Judicial Diversion Program for Certain Felony Offenders"**

### **Criminal Procedure Law Section 216.00**

#### § 216.00. Definitions

The following definitions are applicable to this article:

1. "Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she:

(a) within the preceding ten years, excluding any time during which the offender was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony, has previously been convicted of: (i) a violent felony offense as defined in section 70.02 of the penal law or (ii) any other offense for which a merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law, or (iii) a class A felony offense defined in article two hundred twenty of the penal law; or

(b) has previously been adjudicated a second violent felony offender pursuant to section 70.04 of the penal law or a persistent violent felony offender pursuant to section 70.08 of the penal law.

A defendant who also stands charged with a violent felony offense as defined in section 70.02 of the penal law or an offense for which merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law for which the court must, upon the defendant's conviction thereof, sentence the defendant to incarceration in state prison is not an eligible defendant while such charges are pending. A defendant who is excluded from the judicial diversion program pursuant to this paragraph or paragraph (a) or (b) of this subdivision may become an eligible defendant upon the prosecutor's consent.

2. "Alcohol and substance abuse evaluation" means a written assessment and report by a court-approved entity or licensed health care professional experienced in the treatment of alcohol and substance abuse, or by an addiction and substance abuse counselor credentialed by the office of alcoholism and substance abuse services pursuant to section 19.07 of the mental hygiene law, which shall include:

(a) an evaluation as to whether the defendant has a history of alcohol or substance abuse or alcohol or substance dependence, as such terms are defined in the diagnostic and statistical manual of mental disorders, fourth edition, and a co-occurring mental disorder or mental illness and the relationship between such abuse or dependence and mental disorder or mental illness, if any;

(b) a recommendation as to whether the defendant's alcohol or substance abuse or

dependence, if any, could be effectively addressed by judicial diversion in accordance with this article;

(c) a recommendation as to the treatment modality, level of care and length of any proposed treatment to effectively address the defendant's alcohol or substance abuse or dependence and any co-occurring mental disorder or illness; and

(d) any other information, factor, circumstance, or recommendation deemed relevant by the assessing entity or specifically requested by the court.

#### **Criminal Procedure Law Section 216.05**

##### **§ 216.05. Judicial diversion program; court procedures**

1. At any time after the arraignment of an eligible defendant, but prior to the entry of a plea of guilty or the commencement of trial, the court at the request of the eligible defendant, may order an alcohol and substance abuse evaluation. An eligible defendant may decline to participate in such an evaluation at any time. The defendant shall provide a written authorization, in compliance with the requirements of any applicable state or federal laws, rules or regulations authorizing disclosure of the results of the assessment to the defendant's attorney, the prosecutor, the local probation department, the court, authorized court personnel and other individuals specified in such authorization for the sole purpose of determining whether the defendant should be offered judicial diversion for treatment for substance abuse or dependence, alcohol abuse or dependence and any co-occurring mental disorder or mental illness.

2. Upon receipt of the completed alcohol and substance abuse evaluation report, the court shall provide a copy of the report to the eligible defendant and the prosecutor.

3. (a) Upon receipt of the evaluation report either party may request a hearing on the issue of whether the eligible defendant should be offered alcohol or substance abuse treatment pursuant to this article. At such a proceeding, which shall be held as soon as practicable so as to facilitate early intervention in the event that the defendant is found to need alcohol or substance abuse treatment, the court may consider oral and written arguments, may take testimony from witnesses offered by either party, and may consider any relevant evidence including, but not limited to, evidence that:

(i) the defendant had within the preceding ten years (excluding any time during which the offender was incarcerated for any reason between the time of the acts that led to the youthful offender adjudication and the time of commission of the present offense) been adjudicated a youthful offender for: (A) a violent felony offense as defined in section 70.02 of the penal law; or (B) any offense for which a merit time allowance is not available pursuant to subparagraph (ii) of paragraph (d) of subdivision one of section eight hundred three of the correction law; and

(ii) in the case of a felony offense defined in subdivision four of section 410.91 of this chapter, any statement of or submitted by the victim, as defined in paragraph (a) of subdivision two of section 380.50 of this chapter.

(b) Upon completion of such a proceeding, the court shall consider and make findings of fact with respect to whether:

(i) the defendant is an eligible defendant as defined in subdivision one of section 216.00 of this article;

(ii) the defendant has a history of alcohol or substance abuse or dependence;

(iii) such alcohol or substance abuse or dependence is a contributing factor to the defendant's criminal behavior;

(iv) the defendant's participation in judicial diversion could effectively address such abuse or dependence; and

(v) institutional confinement of the defendant is or may not be necessary for the protection of the public.

4. When an authorized court determines, pursuant to paragraph (b) of subdivision three of this section, that an eligible defendant should be offered alcohol or substance abuse treatment, or when the parties and the court agree to an eligible defendant's participation in alcohol or substance abuse treatment, an eligible defendant may be allowed to participate in the judicial diversion program offered by this article. Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges; provided, however, that no such guilty plea shall be required when:

(a) the people and the court consent to the entry of such an order without a plea of guilty; or

(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.

5. The defendant shall agree on the record or in writing to abide by the release conditions set by the court, which, shall include: participation in a specified period of alcohol or substance abuse treatment at a specified program or programs identified by the court, which may include periods of detoxification, residential or outpatient treatment, or both, as determined after taking into account the views of the health care professional who conducted the alcohol and substance abuse evaluation and any health care professionals responsible for providing such treatment or monitoring the defendant's progress in such treatment; and may include: (i) periodic court appearances, which may include periodic urinalysis; (ii) a requirement that the defendant refrain from engaging in criminal behaviors; (iii) if the defendant needs treatment for opioid abuse or dependence, that he or she may participate in and receive medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice, provided that no court shall require the use of any specified type or brand of drug during the course of medically prescribed drug treatments.

6. Upon an eligible defendant's agreement to abide by the conditions set by the court, the court shall issue a securing order providing for bail or release on the defendant's own recognizance and conditioning any release upon the agreed upon conditions. The period of alcohol or substance abuse treatment shall begin as specified by the court and as soon as practicable after the defendant's release, taking into account the availability of treatment, so as to facilitate early intervention with respect to the defendant's abuse or condition and the effectiveness of the treatment program. In the event that a treatment program is not immediately available or becomes unavailable during the course of the defendant's participation in the judicial diversion program, the court may release the defendant pursuant to the securing order.

7. When participating in judicial diversion treatment pursuant to this article, any resident of this state who is covered under a private health insurance policy or contract issued for delivery in this state pursuant to article thirty-two, forty-three or forty-seven of the insurance law or article forty-four of the public health law, or who is covered by a self-funded plan which provides coverage for the diagnosis and treatment of chemical abuse and chemical dependence however defined in such policy; shall first seek reimbursement for such treatment in accordance with the provisions of such policy or contract.

8. During the period of a defendant's participation in the judicial diversion program, the court shall retain jurisdiction of the defendant, provided, however, that the court may allow such defendant to (i) reside in another jurisdiction, or (ii) participate in alcohol and substance abuse treatment and other programs in the jurisdiction where the defendant resides or in any other jurisdiction, while participating in a judicial diversion program under conditions set by the court and agreed to by the defendant pursuant to subdivisions five and six of this section. The court may require the defendant to appear in court at any time to enable the court to monitor the defendant's progress in alcohol or substance abuse treatment. The court shall provide notice, reasonable under the circumstances, to the people, the treatment provider, the defendant and the defendant's counsel whenever it orders or otherwise requires the appearance of the defendant in court. Failure to appear as required without reasonable cause therefor shall constitute a violation of the conditions of the court's agreement with the defendant.

9. (a) If at any time during the defendant's participation in the judicial diversion program, the court has reasonable grounds to believe that the defendant has violated a release condition or has failed to appear before the court as requested, the court shall direct the defendant to appear or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, that under no circumstances shall a defendant who requires treatment for opioid abuse or dependence be deemed to have violated a release condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice. The provisions of subdivision one of section 530.60 of this chapter relating to revocation of recognizance or bail shall apply to such proceedings under this subdivision.

(b) In determining whether a defendant violated a condition of his or her release under the judicial diversion program, the court may conduct a summary hearing consistent with due process and sufficient to satisfy the court that the defendant has, in fact, violated the

condition.

(c) If the court determines that the defendant has violated a condition of his or her release under the judicial diversion program, the court may modify the conditions thereof, reconsider the order of recognizance or bail pursuant to subdivision two of section 510.30 of this chapter, or terminate the defendant's participation in the judicial diversion program; and when applicable proceed with the defendant's sentencing in accordance with the agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence. In determining what action to take for a violation of a release condition, the court shall consider all relevant circumstances, including the views of the prosecutor, the defense and the alcohol or substance abuse treatment provider, and the extent to which persons who ultimately successfully complete a drug treatment regimen sometimes relapse by not abstaining from alcohol or substance abuse or by failing to comply fully with all requirements imposed by a treatment program. The court shall also consider using a system of graduated and appropriate responses or sanctions designed to address such inappropriate behaviors, protect public safety and facilitate, where possible, successful completion of the alcohol or substance abuse treatment program.

(d) Nothing in this subdivision shall be construed as preventing a court from terminating a defendant's participation in the judicial diversion program for violating a release condition when such a termination is necessary to preserve public safety. Nor shall anything in this subdivision be construed as precluding the prosecution of a defendant for the commission of a different offense while participating in the judicial diversion program.

(e) A defendant may at any time advise the court that he or she wishes to terminate participation in the judicial diversion program, at which time the court shall proceed with the case and, where applicable, shall impose sentence in accordance with the plea agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence.

10. Upon the court's determination that the defendant has successfully completed the required period of alcohol or substance abuse treatment and has otherwise satisfied the conditions required for successful completion of the judicial diversion program, the court shall comply with the terms and conditions it set for final disposition when it accepted the defendant's agreement to participate in the judicial diversion program. Such disposition may include, but is not limited to: (a) requiring the defendant to undergo a period of interim probation supervision and, upon the defendant's successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (b) requiring the defendant to undergo a period of interim probation supervision and, upon successful

completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offense and sentencing the defendant as promised in the plea agreement, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or (c) allowing the defendant to withdraw his or her guilty plea and dismissing the indictment.

11. Nothing in this article shall be construed as restricting or prohibiting courts or district attorneys from using other lawful procedures or models for placing appropriate persons into alcohol or substance abuse treatment.

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Serving Veterans in New York: New York's Courts, Laws,  
and Programs Uniquely Designed to Serve Veterans

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## Topic Three

### How Can Veterans Access Assistive Technology

Presented by Christy Asbee





**VETERANS' ACCESS TO  
ASSISTIVE TECHNOLOGY  
IN THE COMMUNITY, HIGHER ED, AND WORKPLACE**

DISABILITY RIGHTS NEW YORK  
25 CHAPEL STREET, SUITE 1005  
BROOKLYN, NY 11201  
CHRISTY ASBEE, PAAT STAFF ATTORNEY ([Christina.Asbee@disabilityrightsny.org](mailto:Christina.Asbee@disabilityrightsny.org))

**DISABILITY RIGHTS NEW YORK (DRNY)**

- Protection and Advocacy agency for New York State
- Authorized by federal law to provide legal representation and other advocacy services under federal and state laws to people with disabilities
- Help people with disabilities with disability-related legal matters, e.g. getting reasonable accommodations at work

## TOPICS TO DISCUSS



## VETERANS IN THE COMMUNITY

- The Fair Housing Act: Prohibits housing discrimination in public and private housing on the basis of a person's disability.
  - Applies to renting and buying/selling; financing, zoning, etc.
  - Requires reasonable exceptions to standard policies to ensure equal access/opportunity.
- Olmstead v. L.C., (1999): Supreme Court ruling that requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.
  - NY State - Report and Recommendations of the Olmstead Cabinet (October 2013): Comprehensive plan to redesign the NY Medicaid program to improve care conditions and delivery of community-based care for New Yorker's with disabilities.

## **VETERANS IN NURSING/REHAB FACILITIES**

- Prioritize returning to the community setting
  - Govt and orgs must assist individuals who are institutionalized or housed in other segregated settings to move to integrated, community-based settings. *Olmstead v. L.C.*, 527 U.S. 581 (1999)
- Veterans can access AT needed to return to the community through:
  - VA – when condition is linked to in-service disability or veteran receives full medical coverage from VA
  - NYS Medicaid and waiver programs
  - Medicare and private insurance plans
  - Foundations and non-profits
  - Landlords and property managers (in NYC)

## **VETERANS IN NURSING/REHAB FACILITIES**

- NYS Veterans Nursing Homes
  - Skilled nursing facilities owned and operated by the New York State Department of Health for veterans and their dependents.
  - Services paid by individual's available insurance plans.
  - Must meet admissions guidelines – meet definition of “veteran.”
  - <http://www.nysvets.org/>
- Each facility provides rehab services.
  - Staff works directly with VA to obtain AT needed to return home.

## **LEGAL RIGHTS TO AT IN HIGHER EDUCATION**

- Rehabilitation Act, Sec. 504
  - Universities, colleges, and vocational schools are required to provide reasonable accommodations to afford students with disabilities equal opportunity to the educational program(s) offered by the schools.
    - 45 C.F.R. § 605.43
- Americans with Disabilities Act (ADA)
  - Schools must make their programs accessible to qualified students with disabilities.
    - Publicly-funded institution - 42 U.S.C.A. § 12132
    - Privately-funded institution - 42 U.S.C. § 12182

## **LEGAL RIGHTS TO AT IN HIGHER EDUCATION**

- **Student Responsibilities**
  - Duty to self-identify
  - Notify the Disability Services Coordinator
  - Request Accommodations
  - Provide Documentation



## LEGAL RIGHTS TO AT IN HIGHER EDUCATION

- When can the school legally deny a request for RA?
  - Undue burden;
  - Fundamental alteration;
  - Direct threat.
- What options are available if denied RA?
  - School's Appeal Process
  - Office of Civil Rights, U.S. Department of Education

## VOCATIONAL REHABILITATION PROGRAMS

### VetSuccess (VR&E Program)

Operated by VA.  
Program to help veterans and dependents transition into college and the workforce.  
<http://www.benefits.va.gov/vocrehab/vsoc.asp>

### Commission for the Blind

Operated by NYS.  
Provides people with legal blindness the supports needed to achieve suitable employment.  
<http://ocfs.ny.gov/main/cb/about.asp>

### Acces-VR

Operated by NYS.  
Provides qualifying individuals with disabilities with training, support, and job placement services.  
<http://www.acces.nysed.gov/vr>

## **VOCATIONAL REHABILITATION SERVICES**

- VR&E: Assists service-disabled veterans to prepare for, obtain, and maintain suitable employment. For those persons who are severely disabled and that gainful employment is not an option, assistance may be provided to allow that person to live more independently in his or her community.
- ACCES-VR: Adult Career & Continuing Education Services – Vocational Rehabilitation (formerly VESID). The goal of ACCES-VR is to help individuals with disabilities prepare for, secure, retain, or regain competitive employment.
- NYSCB: The New York State Commission for the Blind (formerly CBVH) provides services to individuals who are legally blind. One of NYSCB's primary objectives is to assist consumers in achieving economic self-sufficiency and full integration into society.

## **NYSCB AND ACCES-VR PROGRAM INFO**

- The individual has:
  1. A Physical or Mental Impairment which is a;
  2. Substantial Impediment to employment;
  3. Needs Vocational Rehabilitation services to “prepare for, secure, retain, or regain employment;” and
  4. Can benefit from Vocational Rehabilitation services (this is presumed).

## **VOCATIONAL REHABILITATION SERVICES**

### **Program Limitations:**

- Your disability must be recognized as what makes it difficult for you to obtain or retain employment.
- If you receive SSI or SSDI you will be presumed eligible for services.
- There is no guarantee that you will be given services.

## **LEGAL PROTECTIONS IN THE WORKPLACE**

- Title I of the Americans with Disabilities Act (ADA)
  - Employers with 15 or more employees must comply with the ADA.
    - 29 CFR §1630.2
  - Prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

## ADA BUZZ WORDS – 29 CFR §1630.2

- **Qualifying Individual:** An individual with an ADA-recognized disability who can, with or without accommodations, perform the “essential functions of the job.”
- **Disability:** physical or mental impairment that substantially limits one or more major life activities such as walking, speaking, lifting, hearing, seeing, reading, eating, sleeping, concentrating, or working.
- **Reasonable Accommodation:** Modifications or adjustments to a job application process, offer, schedule, and/or work environment that enable an applicant/employee to perform the job.
- **Undue Hardship:** Significant difficulty or expense incurred by an employer in providing the requested accommodation.

## LEGAL PROTECTIONS IN THE WORKPLACE

- **Employer’s Responsibilities**
  - Provide **reasonable accommodations** to employees with disabilities;
  - Don’t use eligibility standards that unfairly screen out people with disabilities; and
  - Avoid discriminatory hiring and firing practices.
- **Employee’s Responsibility**
  - Recognize the need for accommodations to perform **essential functions** of employment.
  - Request the accommodation(s) needed.
  - Best practice: Put everything in writing and keep copies for yourself!

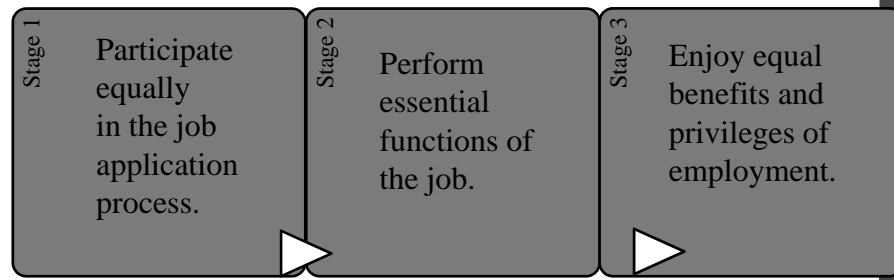
## REASONABLE ACCOMMODATIONS AT EVERY STAGE

Provide reasonable accommodations necessary for an individual to

### Interview

### Post Offer

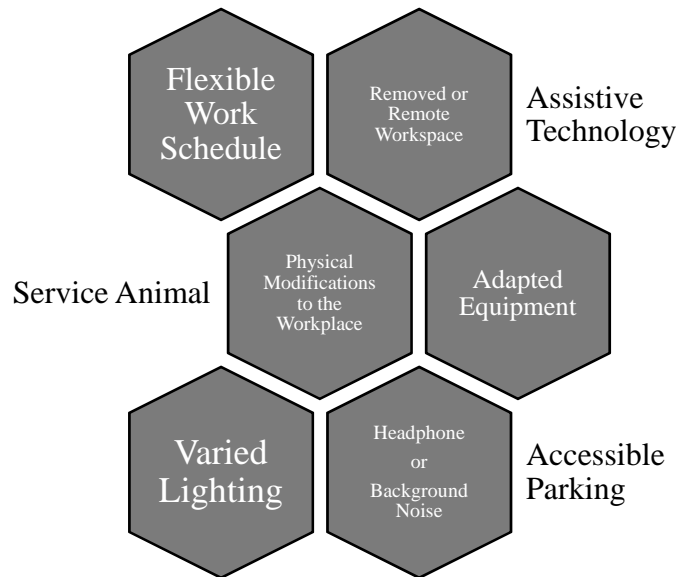
### Employment



## REASONABLE ACCOMMODATION REQUESTS

- Make a request for an accommodation when you need it.
- Process for a request
  - There is not a general or legal process. Check the company handbook, or ask HR or a supervisor.
  - Make requests in writing and provide documentation up front.
- Timeline for request
  - This will depend on the complexity and/or cost of a request.

## EXAMPLES OF REASONABLE ACCOMMODATIONS



## WHEN IS A REQUESTED ACCOMMODATION *UNREASONABLE*?

1. The accommodation would cause undue hardship to the employer; OR
  - i.e. Financial hardship
  - The request is unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.
  - 29 CFR §1630.9

### **WHEN IS A REQUESTED ACCOMMODATION *UNREASONABLE?***

2. The individual cannot perform the essential functions of the job because of her/his disability, even with an accommodation.

- An accommodation is not required to *do* the job for the individual, but to *accommodate* the individual in completing her/his job tasks.
- 29 CFR §1630.2

### **Useful Info about Accommodations**

- Religious Organizations: Cannot discriminate against a qualified individual, who satisfies the permitted religious criteria, on the basis of his or her disability.
  - 29 CFR §1630.16
- Drugs: Employers can test for use of illegal drugs.
- Smoking: Employers can restrict or ban smoking on premises.
- Communicable Disease: The risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, but the employer must consider accommodating by reassignment to a non-food handling job.

## **Available Reasonable Accommodations**

### **Ask JAN!**

- The Job Accommodation Network (JAN)
  - Offers guidance on workplace accommodations and disability employment issues.
  - Helps people with disabilities enhance their employability, and
  - Shows employers how to capitalize on the value and talent that people with disabilities add to the workplace.
- <https://askjan.org/links/atoz.htm>

## **DISABILITY RIGHTS NEW YORK (DRNY)**

**25 CHAPEL STREET, SUITE 1005**

**BROOKLYN, NY 11201**

**(518) 432-7861 (VOICE)**

**(518) 512-3448 (TTY)**

**(800) 993-8982 (TOLL-FREE VOICE/TTY)**

**(718) 797-1161 (FAX)**

**Email:** [mail@disabilityrightsny.org](mailto:mail@disabilityrightsny.org)

**Website:** <https://www.disabilityrightsny.org/>

**Facebook:** <https://www.facebook.com/disabilityrightsnewyork>



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Serving Veterans in New York: New York's Courts, Laws,  
and Programs Uniquely Designed to Serve Veterans

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## Speaker Biographies



## Speaker Biographies

### Christy Asbee

Christy Asbee is a staff attorney at Disability Rights New York. She serves NYS residents with disabilities receiving, interested in receiving, or having difficulty obtaining assistive technology. Christy has helped individuals receive devices such as motorized wheelchairs, speech generating devices, computers and training services, and the like through the VA, state and private health insurance providers, schools, employers, and other funding agencies. Her work helps people live independently, meet educational goals, and find and maintain employment.

Christy received her J.D. from Vermont Law School in 2011. Prior to law school, she received a B.S. from Elmhurst College in Chicago, IL, attended Universitat Pompeu Fabra in Barcelona, Spain, and worked for two years in Akita, Japan.

### Art Cody

Captain Art Cody, USN (Retired) is Deputy Director of the Veterans Defense Program of the New York State Defenders Association. In total, his active and reserve military career spans over thirty years and he is veteran of multiple combat zone deployments. He served aboard *USS Enterprise* (CVN-65) in the initial response to the 9-11 attacks and was most recently deployed to Afghanistan (2011-2012) as the Director of the Rule of Law Section, US Embassy Kabul. As a civilian lawyer, he has represented criminal defendants for over twenty years and currently chairs the Capital Punishment Committee of the New York City Bar Association. He frequently presents nationally on the defense of veterans, provides counsel to lawyers for veterans, and recently served as lead counsel in a veteran capital clemency hearing. A graduate of West Point, Art has a Master's Degree from the University of Southern California and graduated *magna cum laude* from Notre Dame Law School where he was the Executive Editor of the *Notre Dame Law Review* and founded the Notre Dame Coalition to Abolish the Death Penalty. His military decorations include the Navy Bronze Star Medal, Meritorious Service Medal, Naval Aviator Badge, and the German Armed Forces Parachutist Badge.

### Benjamin Pomerance

Benjamin Pomerance, Esq., is the Deputy Director for Program Development for the New York State Division of Veterans' Affairs. In this role, he serves as the Deputy General Counsel for the agency, as well as working as the agency's Legislative Liaison and overseeing several of the Division's programming initiatives. His work focuses on advocacy and assistance for Veterans, Service members, and their families on a wide range of federal and state issues. He also leads Governor Cuomo's Law School Consortium project, facilitating programs at New York State's law schools offering pro bono legal services for Veterans.



Apart from his work for the Division, scholarly journals at Albany, Belmont, Delaware, Florida Coastal, Gonzaga, Hamline, Ohio Northern, Marquette, and Maryland law schools have published or will soon publish Benjamin's articles on topics ranging from elder law to the federal judiciary to freedom of speech in post-revolutionary governments. He also contributed a chapter to an internationally published elder law anthology. The U.S. Court of Appeals for Veterans' Claims has cited his written work about the United States Department of Veterans Affairs' federal fiduciary system.

His recent speaking engagements include panel discussions at the 2016 and 2015 international Law & Society Conferences, the International Elder Law & Policy Conference, and the International Conference on Contracts, as well as leading and moderating programs in every region of New York State regarding benefits and services for Veterans and their families.

Benjamin graduated as the salutatorian of his class from Albany Law School in 2013. While at Albany Law, he founded and directed the school's Veterans' Rights Pro Bono Project, for which he received the "President's Pro Bono Service Award" from the New York State Bar Association. He served as the Executive Editor for Symposium for the *Albany Law Review*, led the school's student chapter of the National Academy of Elder Law Attorneys, and published a report about human rights concerns confronting America's aging prison population as an Edgar & Margaret Sandman Fellow with the Government Law Center.

Apart from his work in the law, Benjamin is an avid arts journalist with more than 500 published articles, a pursuit for which he has received first-place awards in feature writing from the New York State Press Association.

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