

# Unwavering Intent: Congress' Enduring Commitment to Veterans Benefits

January 2024

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## Introduction

Congress never intended to exclude service members with other than honorable discharges from benefits provided by the Department of Veterans Affairs (VA). To this day, VA benefit eligibility remains governed by the World War II-era GI Bill. During the 1944 GI Bill debates in Congress, the House and Senate directly engaged in discussion over the character of discharge needed to obtain benefits. While the War Department pushed for an honorable discharge requirement, Congress ultimately adopted an “other than dishonorable” eligibility standard. Though Congress has periodically revisited the question of restricting access to veterans benefits to honorably discharged veterans, it has uniformly rejected that suggestion on every occasion, allowing the “other than dishonorable” eligibility standard to remain. Despite this standard, the actual provision of VA benefits has consistently excluded veterans with other than honorable discharges, resulting in a lifetime loss of benefits for hundreds of thousands of former service members. The disproportionately large share of incarcerated veterans who have received an other than honorable discharge suggests that the denial of benefits may have a criminogenic effect, though more research on that possibility is needed. Bringing the provision of benefits into alignment with the plain statutory text and congressional intent could have the combined impact of recognizing the sacrifice of a larger number of veterans and improving public safety.

## Key Takeaways

- At the point of separation from the military, all service members receive a discharge with one of five possible characterizations: honorable, general under honorable conditions, other than honorable, bad conduct, or dishonorable.<sup>1</sup> Among other things, these discharge characterizations are used in specifying eligibility for veterans services and benefits from the VA.
- In 1944, Congress passed legislation demonstrating its commitment to provide veterans benefits to a wide range of former service members, specifying that those discharged “under conditions other than dishonorable” should be eligible for VA benefits. Congress has consistently reinforced that commitment over the last 80 years.
- The VA’s implementation of this legislation routinely runs contrary to this plain statutory text and congressional intent, with denial of benefits to veterans with other than honorable discharges. With a growing proportion of service members receiving these discharges as they exit the military, the VA’s practice has led to the lifetime denial of benefits for hundreds of thousands of veterans.
- Service members with other than honorable discharges are overrepresented among justice-involved veterans. For example, veterans with other than honorable discharges accounted for approximately 6% of all discharges over the last 20 years but comprise 18% of all incarcerated veterans. While more research is needed, this disparity suggests that the denial of benefits may contribute to increased criminal behavior among veterans.
- Steps should be taken to ensure that the provision of VA benefits aligns with the plain statutory text and congressional intent, ensuring that more veterans receive the benefits to which they are entitled. Doing so could reduce the number of veterans who become involved in the criminal justice system, leading to positive outcomes for individual veterans and public safety.

## **Veterans Benefits and the 1944 GI Bill of Rights**

Due to the 1944 G.I. Bill of Rights, Congress continues to control access to VA benefits.<sup>2</sup> The benefits eligibility standard created through this legislation was expansive,<sup>3</sup> intending that all those who served are VA-eligible if they were “discharged or released therefrom under conditions other than dishonorable.”<sup>4</sup> In tracking the development of this eligibility criteria, this report reviews veterans benefits before the 1944 GI Bill, congressional consideration of the bill, and interpretations of the act since its passage. Overall, the review finds that the plain text and legislative history demonstrate that Congress consistently intended to grant benefits broadly to all veterans if they were “discharged or released therefrom under conditions other than dishonorable.”<sup>5</sup>

### **Benefits Before the 1944 GI Bill**

The United States has a long and varied history of extending benefits to veterans. Before passing the 1944 GI Bill, this was done on a conflict-by-conflict basis, with varying benefits structures.<sup>6</sup> For example, Congress required an honorable discharge for the awarding of disability pensions for veterans of the Spanish-American War, Philippine Insurrection, and Boxer Rebellion.<sup>7</sup> Similarly, before World War II, Congress demanded an honorable discharge for access to medical care for service-connected disabilities for peacetime veterans.<sup>8</sup>

At other times, however, Congress elected to extend benefits to service members with honorable or general under honorable conditions discharges,<sup>9</sup> or even to those with other than honorable discharges.<sup>10</sup> In still other settings, Congress excluded only those service members who engaged in a particular activity, rather than focusing eligibility on the character of discharge. The War Risk Insurance Act of 1917, for instance, barred benefits for veterans discharged for “mutiny, treason, spying, or any offense involving moral turpitude, or willful and persistent misconduct, of which he was found guilty by court-martial, or that he was an alien, conscientious objector who refused to perform military duty or to wear the uniform, or a deserter.”<sup>11</sup> This history of benefits displays an ad hoc approach to eligibility.

The veterans’ benefits eligibility statute enacted in 1933 took a different approach by delegating the discretion to define an eligibility standard to the VA. This act empowered the VA administrator to create, via regulation, such “requirements as to entitlement as he shall deem equitable and just.”<sup>12</sup> In exercising this authority, the VA limited benefit eligibility to veterans with honorable discharges.<sup>13</sup> This approach did away with the prior ad hoc nature of

past benefits schemes by taking a distinctly narrow view of eligibility.

This ad hoc and then restrictive nature of veterans' benefits contributed greatly to protests by veterans in the 1930s, especially WWI veterans. These protests included the Bonus March and Bonus Expeditionary Force that set up encampments in Washington, D.C.<sup>14</sup> President Herbert Hoover's refusal to grant veteran demands for benefits, coupled with his decision to send the Army to raze the Washington camps and use tear gas to disperse the protesters, came to symbolize Hoover's disregard for the common man and contributed to Franklin Roosevelt's presidential victory.<sup>15</sup> Members of Congress were aware of this recent history when it came time for them to provide benefits for World War II veterans through the 1944 GI Bill.

### **Benefit Eligibility Language in the 1944 GI Bill**

According to the plain text of the 1944 GI Bill, which remains the law today, there are two means for those who served to be ineligible for VA benefits. First, a veteran may be convicted by a court-martial and discharged dishonorably.<sup>16</sup> Second, the G.I. Bill of Rights gives the VA the power to exclude those who, while not dishonorably discharged, separated from the military under "dishonorable conditions."<sup>17</sup> Not wanting to underserve veterans, Congress listed six specific categories that signify these dishonorable conditions, reflecting either a service member's rejection of military authority or commission of a felony offense.<sup>18</sup>

- desertion
- discharge as a sentence for conviction by a general court-martial
- absence without leave for more than 180 days without compelling circumstances to explain the absence
- conscientious objection with refusal to follow orders
- request for separation by an alien
- resignation by an officer for the good of the service.<sup>19</sup>

As a safety valve, Congress empowered the VA to exclude veterans who do not fall under the six categories above but were determined by the VA to have been discharged under dishonorable conditions.<sup>20</sup> As the history of the statute makes clear, this delegation to VA officials was never meant to be at the expense of the inclusionary criteria specified by

Congress.<sup>21</sup>

## **Debates Over the 1944 GI Bill Eligibility Language**

The American Legion played a large role in initially lobbying for the 1944 GI Bill.<sup>22</sup> Benefit eligibility as it related to character of discharge immediately became a topic of discussion. The American Legion took an expansive position in using the phrase “conditions other than dishonorable” in its proposals to both houses of Congress. In hearings and in floor debates, members of the Senate and House gave varying reasons for agreeing, or disagreeing, with this position.

Encapsulating an argument based around political and economic sentiments, Rep. Homer Angell (R) noted the following:

*“We do not want to see duplicated again the spectacle that took place following the last World War, when thousands of our heroic fighting men were compelled to stand on street corners seeking employment, or be subjected to the humiliation of accepting menial jobs merely to keep body and soul together during the time they were seeking to rehabilitate themselves and find permanent employment in our economic structure.”*<sup>23</sup>

Similarly, Rep. William Bennett (R) stated on the floor:

*“[W]hen our loved ones return victorious from this awful war, their first question is going to be a practical one, ‘Where do we go from here?’ Orations, parades, and resolutions of gratitude will not pay rent, buy groceries, or start a man in business. And they cannot eat medals. Veterans will return to their homes with an ambition to get off the Government payroll. They will not want any G.I. job selling apples and raking leaves. They will want to carve out their own*

*futures as freemen have always done in America. But, in many cases they will need help so that they can help themselves. Therein lies the responsibility of Congress. President Abraham Lincoln said, 'It is the duty of the country to care for him who shall have borne the battle and for his widow and orphans.'* <sup>24</sup>

In addition to economic considerations, members of Congress reflected their concerns with the recent history of the Bonus Marchers and Bonus Expeditionary Force. Here, Congress did not want to replicate the political unrest of the 1930s, which in turn led to marches on the Capitol itself.<sup>25</sup> Rep. Samuel Weiss (D) expressed this view well.

*"[M]y pledge to G.I. Joe is: History shall not repeat itself. I am fully cognizant of the failure of the Congress following World War No. 1 ... to enact legislation to protect the war veterans of that historic conflict. ... Lest we forget, our heroes and starving veterans of World War No. 1—Flanders Field, Chateau-Thierry, and Verdun—were run out of the National Capital at the point of bayonets and with tear gas when they came to fight for their rights—simple rights—to work and earn a livelihood in a democracy for which so many of their buddies paid the supreme sacrifice. With that record so clear in my mind, I pledged to my boys fighting everywhere, and to their parents, that history shall not repeat itself."* <sup>26</sup>

Members of Congress also sought a broad scope of benefits to express gratitude for the sacrifice of the service members.<sup>27</sup> Many members of Congress were especially motivated to support veterans with disabilities incurred in war.<sup>28</sup> And still others sought to avoid the ad hoc and difficult-to-navigate procedures of past veterans' benefits regimes.<sup>29</sup> Liberal members of Congress tended to see the GI Bill as an opportunity for a second New Deal.<sup>30</sup> Conservative members, on the other hand, supported the bill precisely because it was not a broad social welfare program but rather had been earned by the veterans.<sup>31</sup>

In the context of this debate, both houses expressly discussed the eligibility criteria standard

of providing benefits to those with an “other than dishonorable” discharge. This standard served Congress’s desire to prevent economic and political crises while honoring service members’ sacrifices by making available an array of readjustment benefits; it was also a single standard that applied uniformly across all the benefit programs.

In selecting the “other than dishonorable” standard, Congress rejected the stricter approach of providing benefits to those with honorable discharges only, which had been a hallmark of pre-1944 veterans’ benefits programs. The members knew full well that this standard would include those who were not the best service members. As Rep. Bernard Kearney (R) put it: Individuals who were not “good soldiers” may still be “excellent citizens.” He noted that such a service member is “not going to become a very useful citizen to society if he is walking around with a blue discharge.” <sup>32</sup>

Here, Rep. Kearney’s mention of a “blue” discharge refers to a form of administrative separation that no longer exists but is roughly equivalent to receiving either an other than honorable or general under honorable conditions discharge today. Thus, in translating to the contemporary period, the notion of providing blue discharges with VA benefits can be understood as intending that benefits should be given to individuals with other than honorable discharges.

Harry Colmery, the National Commander of the American Legion who created the first draft of the G.I. Bill, explained this choice of an “other than dishonorable” standard at a hearing of the House Committee on World War Veterans’ Legislation:

*“I was going to comment on the language ‘under conditions other than dishonorable.’ Frankly, we use it because we are seeking to protect the Veteran against injustice. ... We do not like the words ‘under honorable conditions’ because we are trying to give the Veteran the benefit of the doubt, because we think he is entitled to it.”* <sup>33</sup>

Colmery went on to point out that a service member may get an unfavorable discharge but “may have been just as dislocated as anyone else” and “just as needy of the help and the benefits that are provided under this act.” <sup>34</sup>

Members of Congress echoed Colmery's sentiments. House Committee Chairman Rep. John Rankin (D), spoke out in favor of "the most liberal [terms]." <sup>35</sup> Rep. Kearney later expressed support for the bill because it put a "mantle of protection" around veterans who had been given "blue discharges"; he was concerned about their employment prospects because "in many instances [they] were of excellent character, but the possession of such a discharge will brand them for life." <sup>36</sup> During the floor debate, Sen. Thomas Connally noted: "We might save some of these men ... We may reclaim these men but if we blackball them and say that they cannot have [veteran benefits] we will confirm them in their evil purposes." <sup>37</sup>

According to many legislators, an "other than dishonorable" standard was appropriate because often there were mitigating or extenuating circumstances that led service members to receive something other than an honorable discharge. They may have served on the front lines but later experienced combat stress or drank more heavily. <sup>38</sup> Others noted that service members are often young and immature. <sup>39</sup> Further, the use of an honorable discharge standard was known, even at that time, to disproportionately exclude Black veterans. <sup>40</sup>

Additionally, administrative discharge proceedings in this era had few procedural protections for service members. <sup>41</sup> As a result, disparities existed among units and across service branches, and different commanding officers addressed similar misconduct episodes in disparate ways. <sup>42</sup>

Some lawmakers were concerned that this might unfairly lead to a service member receiving a less-than-honorable discharge, meaning any discharge that is not honorable or general under honorable conditions. For example, members expressed concern that less than honorable discharges would be used because it was an expedient way to downsize units. Similarly, concerns were raised that such discharges would fall on service members who had "run afoul of ... temperamental commanding officers," <sup>43</sup> or be used because a service member had a mental or physical disability. <sup>44</sup> Notably, research shows that these same disparities based on race, branch, mental and physical health conditions, and, more recently, sexual orientation, continue to influence the provision of less-than-honorable discharges today. <sup>45</sup>

These and other reasons led members to support a more lenient approach to an extension of benefits to veterans. The Senate Finance Committee, which had jurisdiction over the bill, put this view succinctly: "It is the opinion of the Committee that such [discharge less than Honorable] should not bar entitlement to benefits otherwise bestowed unless such offense was such ... as to constitute Dishonorable conditions." <sup>46</sup>



To implement this standard, Congress assigned to the VA the task of examining each individual case and determining whether the veteran's service was dishonorable or "other than dishonorable" under the law and guidelines set forth by Congress. The goal of this VA discretion was to benefit service members who received less than honorable discharges. As seen in the statements provided above, it was never meant to create a scheme where former service members with an other than honorable discharge are presumed to have served dishonorably.

Although the bill shifted eligibility determination from the military branches to the VA, it ended the VA's prior authority to determine its own eligibility standard separate from the statute, as it had done from 1933 until 1944. By enacting an "other than dishonorable conditions" standard, Congress replaced the VA's previous "honorable conditions" standard. As the American Legion's Colmery explained,

*"[T]his is no reflection upon the services, but frankly we do not care to have the Army and the Navy be the arbiter and primarily pass directly in judgment on whether or not the men who serve the colors derive the benefits granted by the Congress. We prefer to have that done by the Veterans' Administration acting under the supervision of the Congress through a committee like this."* <sup>47</sup>

He clearly envisioned VA discretion as serving an expansive goal. Senator Clark made the same point in noting that the service member was to be the beneficiary of this discretion.

*"I say to the Senator from Massachusetts that what we did was amend that provision by using the words 'under other than dishonorable conditions.' That means that under this provision the Veterans' Bureau, if a man's service has been dishonorable ... the Veterans' Administration will have some discretion with respect to regarding the discharge from the service as dishonorable, and that therefore the man involved will be entitled to the benefit of that discretion."* <sup>48</sup>

Not all agreed with this lenient approach to benefits eligibility. Indeed, many military leaders at the time objected to the notion that general, other than honorable, and bad conduct discharged veterans would be eligible for benefits. Rear Admiral Randall Jacobs, for example, wrote to Congress, arguing that a grant of benefits to veterans with less-than-honorable discharges would interfere with military discipline, have a “detrimental effect on morale,” and allow unfit individuals to enjoy benefits that should be reserved for honorably discharged veterans.<sup>49</sup>

Some in the House shared this view. These legislators expressed concern that the “other than dishonorable” standard might induce bad behavior by service members or reward individuals who shirked their military duties.<sup>50</sup> Other legislators expressed concern about limited hospital beds being occupied by punitively discharged veterans.<sup>51</sup> The House Committee initially acquiesced to the military’s request and changed the eligibility standard to require an honorable discharge to receive benefits.<sup>52</sup>

But the entire House, the Senate, and thus all of Congress came to reject this view. Expressing Congress’ position, Sen. Champ Clark—a former Army Colonel, original sponsor of the G.I. Bill, and future judge on the D.C. Circuit Court of Appeals—contested the military’s perspective from the floor of the Senate:

*“Mr. President, let me say that I am very familiar with the objections raised by Admiral Jacobs. In my opinion, they are some of the most stupid, short-sighted objections which could possibly be raised. They were objections that were considered very carefully both in the subcommittee on Veterans affairs of the Finance Committee and in the full committee itself. ...*

*“In the present war ... in many cases the Army is giving blue discharges, namely, discharges without honor, to those who have had no fault other than that they have not shown sufficient aptitude toward military service. I say that when the Government drafts a man from civil life and puts him in the military service ... and thereafter, because the man does not show sufficient aptitude, gives him a blue discharge, or a discharge without honor, that fact should not be*

*permitted to prevent the man from receiving the benefits which soldiers generally are entitled to.”* <sup>53</sup>

Ultimately, each bill passed its respective house, and the legislation went to conference. In conference, the more expansive “other than dishonorable” eligibility standard won the day. In the House, Rep. Arthur Miller stood up to object to this broader eligibility standard, noting that the eligibility standard would allow veterans with “blue” discharges to use G.I. Bill benefits, contrary to the War Department’s recommendation.<sup>54</sup> Rep. Edith Nourse Rogers, the ranking Republican on the World War Veterans’ Committee and a member of the Joint Conference Committee, rejected Rep. Miller’s arguments. Rogers explained that the Committee’s consensus was to adopt the “other than dishonorable” eligibility standard and concluded: “I would rather take the chance so that all deserving men get their benefits.”<sup>55</sup> The bill then passed both chambers, and President Roosevelt signed it into law on June 22, 1944.<sup>56</sup>

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***While Congress has periodically revisited the question of restricting access to basic veterans benefits to honorably discharged veterans through the years, it has rejected the idea every time. The “other than dishonorable” eligibility standard has persisted to this day through every conflict since World War II.***

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In sum, the 1944 Congress passed the GI Bill of Rights with the full intention that it would benefit service members with “other than dishonorable” discharges. The 1944 Congress understood the military. It was overseeing our World War II effort and in 1944, more than 40 percent of members had served in the military. (Today, by contrast, only 18 percent are veterans.)<sup>57</sup> Congress was aware of the then-recent history of upheaval that resulted when the VA created restrictive benefits regimes for World War I veterans. It debated the question and it considered opposing views on the topic. In this context, it chose to extend veterans benefits expansively to include all except those “discharged under dishonorable conditions.”

And in so doing, it took the added steps of defining when those dishonorable conditions would be met in statutory language.

### **Subsequent Affirmations of Congressional Intent**

This report's conclusion is not novel. Indeed, this was the accepted view immediately following passage of the act. Just two years after passage, the House of Representatives acknowledged the broad scope of the 1944 GI Bill of Rights.

*"In passing the [G.I. Bill], the Congress avoided saying that veteran's benefits are only for those who have been Honorably discharged from service ... Congress was generously providing the benefits on as broad a base as possible and intended that all persons not actually given a Dishonorable discharge should profit by this generosity ...*

*"Every soldier knows that many men, even in his own company, had poor records, but no one ever heard of a soldier protesting that only the more worthy should receive general veterans' benefits. 'This man evaded duty, he has been a 'gold bricker,' he was hard to live with, yet he was a soldier. He wore the uniform. He is one of us.' So they feel. Soldiers would rather some man got more than he deserves than that any soldier should run a chance of getting less than he deserves." <sup>58</sup>*

The House clearly perceived that the GI Bill ensured that benefits would flow to all who received other than honorable discharges.

The military understood this to be the case as well. The Army's then-Adjutant General concluded, "'The recently enacted 'G.I.' legislation,' ... contains provisions under which it appears that [those with blue discharges] are eligible for ... benefits.'" <sup>59</sup>

The VA took a similar perspective. A report of the 1956 Presidential Commission on Veteran Benefits chaired by General Omar Bradley, who had also served as the VA Administrator from

1945 to 1947, likewise explained that “[t]he congressional committees which studied the measure apparently believed that if the conduct upon which the discharge was based could be characterized as dishonorable the Veteran should be barred from any benefit; if it could not be so characterized, the Veteran should be eligible.”<sup>60</sup> The Bradley Commission Staff Report further expounded:

*“The Congress did not want to use the words ‘honorably discharged’ or ‘discharged under honorable conditions,’ because it was felt that such an eligibility requirement was too restrictive. Neither did Congress want to use the words ‘not dishonorably discharged’ because such words would have been too broad and opened the door to persons who were administratively discharged for conduct that was in fact dishonorable. The controversy was finally resolved by adopting the words ‘conditions other than dishonorable.’ ”<sup>61</sup>*

There was no contemporaneous confusion. Congress acted to ensure a broad delivery of benefits to veterans.

Similarly, in 1958 Congress codified all VA statutes into Title 38 of the U.S. Code, reorganizing certain sections in the process. Through codification, the “other than dishonorable” standard moved from a subsection of each individual benefits program to the definitions section, where it became part of the definition of a “veteran.”<sup>62</sup> The statutory bars that excluded veterans who committed specifically enumerated acts were codified in a different section.<sup>63</sup> As a legal matter, these changes did not alter the eligibility standard. Rather the opposite is true. Congress had the opportunity in 1958 to alter the expansive 1944 approach. It chose not to do so, thus cementing the 1944 understanding.

## **Recent Decades: Contradicting Congressional Intent**

While the section above demonstrates the clarity of congressional intent, it is also true that Congress provided power to the VA in the implementation of the GI Bill’s eligibility criteria. As clearly described above, this decision was seen as a way of giving power over benefit eligibility to the VA instead of the military, in the hopes that the VA would more closely follow

congressional intent.

In doing so, Congress allowed the VA to exclude veterans from benefits at its own discretion.<sup>64</sup> Contrary to congressional intent, this discretionary authority has been utilized with significant frequency in recent decades. From 2001 to 2013, roughly 125,000 former service members have been denied access to VA benefits. Of these 125,000 veterans, 85% were denied based on the discretion of the VA. Only 15% have been excluded based on congressional standards.<sup>65</sup> Most of these discretionary denials have fallen on veterans who received an other than honorable discharge, as opposed to the dishonorable discharge that was the focus of exclusions from Congress.

This departure from congressional intent has created a tremendous increase in the number of potentially excluded veterans. From the conclusion of World War II through 2013, roughly 33,000 veterans have received a dishonorable discharge, representing less than one-half of one percent of all discharges. In contrast, over 6.5 times more veterans, or approximately 216,000, have received an other than honorable discharge during this period. Notably, the application of the other than honorable discharge status has also grown, rising from just 1% of veterans during World War II to nearly 6% among veterans discharged in the post-9/11 era.<sup>66</sup>

In sum, while the congressional debate over VA benefit eligibility in 1944, the language in the eventual legislation, and several debates over eligibility in the intervening years all clearly indicated a desire for other than honorable veterans to receive benefits, the recent implementation of this legislation has largely excluded this group.

## **Connections Between Discharge Characterization and Criminal Behavior**

Studies consistently show that veterans receiving other than honorable discharges are more likely to face challenges in their post-military lives. While all veterans are 1.5 times more likely than the general public to die by suicide,<sup>67</sup> suicide risk among veterans with other than honorable discharges is three times higher than it is for honorably discharged veterans.<sup>68</sup> Similarly, veterans with an other than honorable discharge are disproportionately represented among veterans who end up in our nation's prisons and jails. Roughly 6% of all recent veterans have received an other than honorable discharge, yet veterans with this discharge status comprise approximately 18% of all incarcerated former service members.<sup>69</sup>

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***While more research is needed to isolate the specific effect of discharge type on justice system involvement, there are reasons to believe the two are connected. Veterans receiving an other than honorable discharge are more likely to suffer from a range of issues that have also been identified as making veterans more likely to engage in criminal behavior.***

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For example, roughly a quarter of all veterans who were discharged for misconduct screened positive for posttraumatic stress disorder (PTSD), while PTSD showed up for less than half of that percentage (12%) among those discharged under routine conditions.<sup>70</sup> Additional research found that Marines with PTSD were 11 times more likely to be discharged for misconduct compared to Marines without PTSD.<sup>71</sup> The symptoms of PTSD may help to explain this greater prevalence. In particular, PTSD can lead to more erratic behavior, including hypervigilance, aggression, impulsivity, and misappraisal of threat, which may, in turn, lead to military superiors opting to use an other than honorable discharge out of concern for the mission readiness of their troops.<sup>72</sup>

Notably, this same kind of PTSD-linked behavior has also been tied to violent behavior and justice system involvement among veterans. Studies have found that the odds of justice system involvement are 61% greater among veterans with PTSD than it is for those without PTSD, while the odds of arrest for violent offenses are 59% higher.<sup>73</sup> Similarly, veterans who have PTSD are two to three times more likely to perpetrate intimate partner violence compared to the national average.<sup>74</sup> Moreover, after becoming justice-involved, veterans with PTSD are 64% more likely to recidivate, perpetuating continuing harm on themselves and their community.<sup>75</sup>

These results highlight a troubling dynamic. When individuals develop PTSD, traumatic brain injury, or other mental or physical health conditions due to their service, they become more likely to receive an other than honorable discharge. Due to this discharge status, they are then denied access to VA care and benefits that have been specifically designed to help them

deal with those conditions – care and benefits that have been shown to produce superior outcomes among veterans.<sup>76</sup> Without the support and treatment benefits can provide, these veterans are more likely to encounter challenges, including suicide, violent behavior, and cycles of justice system involvement.

## **Conclusion**

Even with the safety net that VA benefits provides for those who served, some veterans will invariably struggle – and a certain proportion will land in the criminal justice system. Creating alignment between what Congress clearly stated and intended and the reality of VA practices today would reduce that share by ensuring that more veterans receive the benefits they earned and get the interventions they need. Doing so would properly recognize the sacrifices veterans have made for our nation and enhance public health and safety as well.

## **Endnotes**

<sup>1</sup> The naming conventions for discharge status have changed over time. During World War II, the most relevant time period for this report, “blue discharges” (also called “blue tickets”) served the function that an other than honorable discharge does today. In 1947, the Army ended the use of blue discharges, replacing them with the category of “undesirable discharges.” The “undesirable discharge” ended in 1982 and was replaced with the “other than honorable discharge.” This report, for clarity, uses the phrasing of other than honorable discharge throughout historical periods because these changes in nomenclature do not affect the meaning of the 1944 GI Bill in relation to this discharge status.

<sup>2</sup> Servicemen’s Readjustment Act of 1944, Pub. L. 78-346, § 400, 58 Stat. 284. In 1984, Congress changed the eligibility standard for VA education benefits to require an honorable characterization. Pub. L. No. 98-525, § 702(a)(1) (1984). This law shifted the eligibility determination for this benefit from the VA to the Department of Defense.

<sup>3</sup> See generally Servicemen’s Readjustment Act of 1944, Pub. L. 78-346, § 400, 58 Stat. 284; S. Rep. No. 78-755, at 15 (1944); H. Rep. No. 78-1418, at 17 (1944); Hearing on H.R. 3917 and S. 1767 to Provide Federal Government Aid for the Readjustment in Civilian Life of



Returning World War Veterans Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 415-16 (1944) [hereinafter House Hearings on 1944 Act]; President's Commission of Veterans' Pensions, Staff of H. Comm. on Veterans' Affairs, Discharge Requirements for Veterans' Benefits (Comm. Print. 1956); Bradford Adams and Dana Montalto, With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from "Veteran" Services, 122 Penn. State. L. Rev. 69 (2017).

<sup>4</sup> 38 U.S.C. §101(2).

<sup>5</sup> 38 U.S.C. §101(2).

<sup>6</sup> See Bradford Adams, Dana Montalto, With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from "Veteran" Services, 122 Penn St. L. Rev. 69, 81 (2017); Harry V. Lerner, Effect of Character of Discharge & Length of Service on Eligibility to Veterans' Benefits, 13 Mil. L. Rev. 121, 127 (1961).

<sup>7</sup> Act of June 5, 1920, ch. 245, 41 Stat. 982; see also Act of June 2, 1930, ch. 375, 46 Stat. 492.

<sup>8</sup> Act of June 16, 1933, ch. 101, 48 Stat. 283.

<sup>9</sup> A discharge not under other than honorable conditions was required for vocational rehabilitation. See Act of July 11, 1919, ch. 12, 41 Stat. 158. This was also the case for the WWI Adjusted Compensation Act. See Act of May 19, 1924, ch. 157, 43 Stat. 121.

<sup>10</sup> At other times, Congress excluded only bad conduct and dishonorable discharges from enumerated hospital, medical care, and burial benefits. See Act of October 6, 1917, ch. 105, 40 Stat. 398; see also

PRESIDENT'S COMM'N ON VETERAN PENSIONS, STAFF OF H. COMM. ON VETERANS' AFFAIRS, 84TH CONG., REP. ON DISCHARGE REQUIREMENTS FOR VETERANS' BENEFITS at 9 (Comm. Print 1956) [hereinafter BRADLEY COMM'N STAFF REPORT]; Harry V. Lerner, Effect of Character of Discharge & Length of Service on Eligibility to Veterans' Benefits, 13 Mil. L. Rev. 121, 128 n.34 (1961).

<sup>11</sup> Act of June 25, 1918, ch. 104, 40 Stat. 609, amended by World War Veterans' Act, ch. 320, 43 Stat. 607 (1924); see also BRADLEY COMM'N STAFF REPORT at 3. The Act also contained an exception to this bar: veterans would still be eligible for benefits if they were "insane" at the time of the otherwise disqualifying misconduct. World War Veterans' Act, § 23, 43 Stat, at

613-14.

<sup>12</sup> Act of March 20, 1933, ch. 3, §§ 4, 19, 48 Stat. 8, 9, 12.

<sup>13</sup> Exec. Order No. 6089 (Mar. 31, 1933); Exec. Order No. 6094 (Mar. 31, 1933); see also Bradford Adams, Dana Montalto, *With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from “Veteran” Services*, 122 Penn St. L. Rev. 69, 82–83 (2017).

<sup>14</sup> See Stephen R. Ortiz, *Rethinking the Bonus March: Federal Bonus Policy, Veteran Organizations, and the Origins of a Protest Movement*, in *VETERANS’ POLICIES, VETERANS’ POLITICS: NEW PERSPECTIVES ON VETERANS IN THE MODERN UNITED STATES* at 177-79, 187. (Stephen R. Ortiz ed., 2012).

<sup>15</sup> See GLENN C. ALTSCHULER & STUART M. BLUMEN, *THE GI BILL: A NEW DEAL FOR VETERANS* 27-29 (2009).

<sup>16</sup> 38 U.S.C. § 5303(a).

<sup>17</sup> H.R. Rep. No. 78-1624, at 26 (1944); 90 Cong. Rec. 3,076-77 (1944).

<sup>18</sup> S. Rep. No. 78-755, at 15 (1944).

<sup>19</sup> 58 Stat. 284 § 300 (1944), Pub. L. No. 78-346 (1944). The bar for service members who were absent without leave for more than 180 days was added in a later statute. Pub. L. No. 95-126, 91 Stat. 1106 (1977).

<sup>20</sup> 38 U.S.C. § 5303.

<sup>21</sup> *Swords to Plowshares and National Veteran Services Program*. (2022). *Underserved: How the VA wrongly excludes veterans with bad paper*.

<https://www.swords-to-plowshares.org/research-publications/underserved>

<sup>22</sup> This entire paragraph, see generally Bradford Adams, Dana Montalto, *With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from “Veteran” Services*, 122 Penn St. L. Rev. 69, 85 (2017); STEPHEN R. ORTIZ, *BEYOND THE BONUS MARCH & GI BILL* 5, 8-9, 13-31, 198-99, 201-02 (2010); GLENN C. ALTSCHULER & STUART M. BLUMEN, *THE GI BILL: A NEW DEAL FOR VETERANS* 13-33 (2009).

<sup>23</sup> 90 CONG. REC. 415 (1944) (statement of Rep. Angell).

<sup>24</sup> 90 CONG. REC. 4443 (1944) (statement of Rep. Bennett).

<sup>25</sup> See generally 90 CONG. REC. 4443 (1944) (statement of Rep. Bennett); 90 CONG. REC. A3008 (1944) (statement of Rep. Weiss); Margot Canaday, Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill, 90 J. Am. Hist. 935, 938 (2003).

<sup>26</sup> 90 CONG. REC. A3008 (1944) (statement of Rep. Weiss).

<sup>27</sup> Margot Canaday, Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill, 90 J. Am. Hist. 935, 938 (2003).

<sup>28</sup> See World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 418, 418-20 (1944); 90 CONG. REC. A3008 (1944) (statement of Rep. Weiss).

<sup>29</sup> See Servicemen's Aid Act of 1944, S. 1767, 78th Cong. (as introduced Mar. 13, 1944).

<sup>30</sup> GLENN C. ALTSCHULER & STUART M. BLUMEN, THE GI BILL: A NEW DEAL FOR VETERANS 6 (2009); Margot Canaday, Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill, 90 J. Am. Hist. 935, 939 (2003).

<sup>31</sup> GLENN C. ALTSCHULER & STUART M. BLUMEN, THE GI BILL: A NEW DEAL FOR VETERANS 6 (2009).

<sup>32</sup> 90 CONG. REC. 4453-54 (1944) (Remarks of Rep. Kearney).

<sup>33</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 418, 415 (1944).

<sup>34</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 418, 416 (1944).

<sup>35</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 418, 420 (1944).

<sup>36</sup> 90 CONG. REC. 4453 (1944).

<sup>37</sup> 90 CONG. REC. 3077 (1944).

<sup>38</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm.

on World War Veterans' Legislation, 78th Cong. 202-05, 417 (1944).

<sup>39</sup> See 90 CONG. REC. 415 (1944) (statement of Rep. Hinshaw); 90 CONG. REC. 3076 (1944) (statement of Sen. Clark).

<sup>40</sup> See Bradford Adams and Dana Montalto, *With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from "Veteran" Services*, 122 Penn. State. L. Rev. 69, 91-92 (2017) (recounting the racist motivations expressed in the House for imposing this higher standard).

<sup>41</sup> Bradford Adams, Dana Montalto, *With Malice Toward None: Revisiting the Historical and Legal Basis for Excluding Veterans from "Veteran" Services*, 122 Penn St. L. Rev. 69, 89-90 (2017).

<sup>42</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 202-05, 417 (1944) (statement of Rep. Rogers, Ranking Member, H. Comm. on World War Legislation).

<sup>43</sup> *Id.* at 295-96; see 90 CONG. REC. 4348 (1944) (statement of Rep. Rogers); 90 CONG. REC. 4454 (1944) (statement of Rep. Rogers).

<sup>44</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 202-05 (1944).

<sup>45</sup> *Swords to Plowshares. Petition for Rulemaking to Amend 38 C.F.R. §§ 3.12(a), 3.12(d), 17.34, 17.36(d). Regulations Interpreting 38 U.S.C. § 101(2). Requirement for Service "Under Conditions Other than Dishonorable."* [https://assets-global.website-files.com/5ddda3d7ad8b1151b5d16cff/5efed0ac6dc9fc718786414b\\_Petition%20to%20amend%20regulations%20implementing%2038%20US%20101\(2\).pdf](https://assets-global.website-files.com/5ddda3d7ad8b1151b5d16cff/5efed0ac6dc9fc718786414b_Petition%20to%20amend%20regulations%20implementing%2038%20US%20101(2).pdf)

<sup>46</sup> Sen. R. on 1944 G.I. Bill.

<sup>47</sup> World War Veterans' Legislation: Hearings on H.R. 3917 and S. 1767 Before the H. Comm. on World War Veterans' Legislation, 78th Cong. 416 (1944).

<sup>48</sup> See, e.g., 70 Cong. Rec. 3,076 (March 24, 1944).

<sup>49</sup> See, e.g., 70 Cong. Rec. 3,076 (March 24, 1944).

<sup>50</sup> See, e.g., House Hearings on G.I. Bill, *supra* note 27, at 418 (statement of Rep. Scrivner); 90 CONG. REC. 5889 (1944) (statement of Rep. Miller).

<sup>51</sup> H.R. REP. No. 1624, at 26 (1944).

<sup>52</sup> Servicemen's Readjustment Act of 1944, S. 1767, 78th Cong. (as amended May 5, 1944); 90 CONG. REC. 4333-36 (1944).

<sup>53</sup> See, e.g., 70 Cong. Rec. 3,076 (March 24, 1944).

<sup>54</sup> 90 CONG. REC. 5889 (1944).

<sup>55</sup> *Id.* at 5890.

<sup>56</sup> Servicemen's Readjustment Act of 1944, ch. 268, 58 Stat. 284.

<sup>57</sup> Congressional Research Service, *Representatives & Senators: Trends in Member Characteristics Since 1945* (Feb. 17, 2012); Rachel Wellford, *By the Numbers: Veterans in Congress*, PBS News Hour (Nov. 11, 2014).

<sup>58</sup> 1946 House Committee on Military Affairs.

<sup>59</sup> Margot Canaday, *Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill*, 90 *J. Am. Hist.* 935, 941 (2003) (quoting the TAG).

<sup>60</sup> President's Comm'n on Veteran Pensions, Staff of High Commissioner on Veterans' Affairs, 84th Cong., *Rep. on Veterans' Benefits in the United States* at 394 (Comm. Print 1956).

<sup>61</sup> President's Comm'n on Veteran Pensions, Staff of High Commissioner on Veterans' Affairs, 84th Cong., *Rep. on Veterans' Benefits in the United States* at 15 (Comm. Print 1956).

<sup>62</sup> Act of Sept. 2, 1958, Pub. L. No. 85-857, 72 Stat. 1105. Compare 10 U.S.C. §§ 694(a), 696(a), 697(c) (1952), with 38 U.S.C. § 101(2) (1958). Prior to 1944, other veteran benefit bills had also incorporated conduct standards into their definitions of the term "veteran." The legislative history does not explain why in 1944 Congress did not incorporate its eligibility standard into the definition of "veteran," or why in 1958 Congress incorporated the "other than dishonorable conditions" element into the definition of "veteran" but not the statutory bars.

<sup>63</sup> 38 U.S.C. § 3103(b) (1958).

<sup>64</sup> 38 U.S.C. § 101(2)

<sup>65</sup> Swords to Plowshares. *Petition for Rulemaking to Amend 38 C.F.R. §§ 3.12(a), 3.12(d), 17.34, 17.36(d). Regulations Interpreting 38 U.S.C. § 101(2). Requirement for Service “Under Conditions Other than*

*Dishonorable.”* [https://assets-global.website-files.com/5ddda3d7ad8b1151b5d16cff/5efed0ac6dc9fc718786414b\\_Petition%20to%20amend%20regulations%20implementing%2038%20USC%20101\(2\).pdf](https://assets-global.website-files.com/5ddda3d7ad8b1151b5d16cff/5efed0ac6dc9fc718786414b_Petition%20to%20amend%20regulations%20implementing%2038%20USC%20101(2).pdf). Note that the National Veterans Legal Services Program (NVLSP) and Swords to Plowshares recently filed for a writ of mandamus asking the Federal Circuit to mandate that the VA promulgate new rules based on this petition. More information on this recent development can be found here:

<https://www.globenewswire.com/news-release/2023/10/25/2766137/0/en/Veteran-Service-Organizations-File-Lawsuit-to-Compel-VA-to-Amend-its-Character-of-Discharge-Regulations.html>.

<sup>66</sup> Swords to Plowshares and National Veteran Services Program. (2022). *Underserved: How the VA wrongly excludes veterans with bad paper.*

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<sup>67</sup> Frank Ruiz et al., *A Practical Review of Suicide Among Veterans: Preventive and Proactive Measures for Health Care Institutions and Providers*, 138 *Public Health Rep* 223 (2023).

<sup>68</sup> Nicholas Barr et al., *How Does Discharge Status Impact Suicide Risk in Military Veterans?*, 17 *Social Work in Mental Health* 48 (2019).

<sup>69</sup> Jennifer Bronson and E. Ann Carson, *Prisoners in 2017*, (2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>;

<sup>70</sup> Emily Brignone et al., *Non-Routine Discharge From Military Service: Mental Illness, Substance Use Disorders, and Suicidality*, 52 *American Journal of Preventive Medicine* 557 (2017)

<sup>71</sup> Robyn Highfill-McRoy et al., *Psychiatric diagnoses and punishment for misconduct: The effects of PTSD in combat-deployed Marines*, 10 *BMC Psychiatry* 1 (2010)

<sup>72</sup> Autumn Backhaus et al., *The many wounds of war: The association of service-related and clinical characteristics with problems with the law in Iraq and Afghanistan veterans*, 49 *Intl. J. of Law & Psych* 205 (2016).

<sup>73</sup> Emmeline N. Taylor et al., *Posttraumatic stress disorder and justice involvement among*

military veterans: A systematic review and meta-analysis, 33 J. of Traumatic Stress 804 (2020).

<sup>74</sup> Tim Hoyt, Alisha M. Wray, & Jennifer Klosterman Rielage, Preliminary investigation of the roles of military background and posttraumatic stress symptoms in frequency and recidivism of intimate partner violence perpetration among court-referred men, 29 J. of Interp. Viol. 1094. (2014).

<sup>75</sup> Matthew William Logan, Susan McNeeley & Mark Alden Morgan, The Effects of Traumatic Brain Injury and Post-Traumatic Stress Disorder on Prison Adjustment and Recidivism among Military Veterans: Evidence from Minnesota, 92 Psychiatr Q 1147 (2021)

<sup>76</sup> Claire O'Hanlon et al., Comparing VA and Non-VA Quality of Care: A Systematic Review, 32 J Gen Intern Med 105 (2017).

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**Suggested citation:** Mulligan, L. (2023). *Unwavering Intent: Congress' Enduring Commitment to Veterans' Benefits*. Council on Criminal Justice.