

# Who's a Veteran? Challenges in Defining and Identifying Veteran Status

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# Introduction

*In August 2022, the Council on Criminal Justice launched the Veterans Justice Commission, a group of 15 top military, veterans, and criminal justice leaders. Its mission is to examine why so many military veterans land in jail and prison, and to produce recommendations for evidence-based policy changes that enhance safety, health, and justice.*

To support the Commission's work, this brief examines how veteran status is defined and identified across various federal, state, and local agencies. Veteran status definition and identification determine access to a wide range of benefits, services, and programs. The lack of consistency in defining and identifying who is—and who is not—a veteran can make a critical difference in the lives of individuals who served in the military and come into contact with the criminal justice system. People who are not defined or identified as veterans may have been unable to access benefits and services that could have diverted them from criminal behavior; such individuals may also be excluded from a range of veteran-specific programs within the criminal justice system.

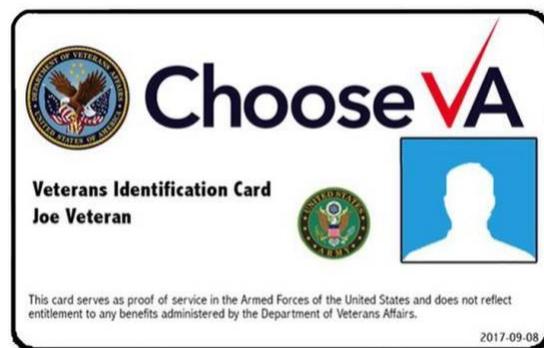
## Key Takeaways

- + There is **no consistent or universal definition** of who is and is not a veteran. The federal government, states, criminal justice agencies, and individual programs use different criteria to define who is an eligible veteran for benefits and services.
- + Common **factors used to determine veteran status** include length of military service, the conditions of that service, and how an individual was discharged from service.
- + Being defined as a veteran **determines eligibility** for government health and financial benefits as well as a range of veteran-specific services offered in the community and the criminal justice system.
- + Many criminal justice agencies rely on individuals to **self-identify their veteran status, and many veterans fail to do so**. Some are unsure of their status given the lack of a clear definition of what factors make someone a veteran. Others hesitate to self-identify as a veteran due to stigma and/or fears of harassment and losing benefits.

- + The combination of imprecise definitions and agencies' reliance on self-identification means many justice-involved veterans are **not gaining access to veteran-specific programs**. These include opportunities to be diverted away from incarceration, policies that consider veteran status a potential mitigating factor in sentencing, and other programs in jails and prisons offered exclusively to veterans.
- + A clear, **universal definition of who is a veteran within the criminal justice system and a better process for independently verifying veteran status** would ensure that more people who have served our country and become justice involved can obtain treatments and services addressing the specific challenges they face.

## A CARD - CARRYING VETERAN?

How veteran status is defined determines eligibility for a range of health and financial benefits, services, and programs. Yet methods for defining and identifying veterans to enable them to access such benefits are often confusing.<sup>1</sup> In 2015, for example, Congress directed the U.S. Department of Veterans Affairs (VA) to issue an identification card to demonstrate proof of military service for discounts and other perks.<sup>2</sup> Although the card identifies military service, it contains a major disclaimer that reads, "This card serves as a proof of service in the Armed Forces of the United States and does not reflect entitlement to any benefits administered by the Department of Veterans Affairs." As the language makes clear, veterans must meet additional requirements to be eligible for VA benefits.<sup>3</sup> In short, individuals may carry a card identifying them as a veteran, but may not be eligible for all veteran services.



The lack of clarity about who qualifies as a veteran creates problems, in part, because individuals must often self-identify their veteran status to access benefits. While that step may seem simple, two factors create complexity for many people who have served in the military:

1. States, localities, and individual government programs define veteran status differently. For example, a certain combination of factors might make a person a veteran under the law in one state, but not in another.
2. As individuals navigate these various definitions, they may be unsure whether they can identify as a veteran in that particular jurisdiction. As a result, individuals may fail to self-identify as a veteran due to uncertainty about their own status, causing them to miss out on crucial benefits and experience unnecessary economic or health-related hardships, both of which may increase risk for criminal activity and justice-system involvement.

The problem of identification is compounded when individuals encounter the criminal justice system. Research suggests that stigma and the fear of harassment and losing benefits make some veterans reluctant to self-identify. One study, for example, indicates that two out of three incarcerated veterans in California failed to report their own status.<sup>4</sup> Veterans who fail to disclose their status to law enforcement, courts, and correctional agencies are unable to take advantage of programs targeting former service members, including Veterans Treatment Courts and veteran-specific correctional housing units.

***Put simply, the lack of a clear definition and a reliance on self-identification to determine veteran status limits access to benefits, services, and programs that can prevent offending or criminal justice system contact by former service members—and assist them once that contact has occurred.***

## **FEDERAL AND STATE VARIATION IN HOW VETERAN STATUS IS DEFINED**

The U.S. Census defines veterans as “men and women who have served (even for a short time), but are not currently serving on active duty.”<sup>5</sup> This is one of the broadest definitions of veterans by a government entity and is notable because it does not include any characterization of an individual's military service or discharge.

The Census definition, however, is only one of many used at the federal level. The VA, which manages financial and health benefits for veterans, limits eligibility to people who served on active duty in the armed forces and left the military under sufficiently honorable conditions.<sup>6</sup> The federal Veterans Preference policy, which provides qualified veteran job candidates advantages over non-veterans in government hiring, defines veterans as individuals who served during specified times of war or hostilities, served

more than 180 days of continuous active-duty service in the armed forces, or have a service-connected disability.

As these differences show, the U.S. government lacks a universal federal concept of a veteran. As a result, states have developed their own definitions. Some are more exclusive than federal conditions, while some are more inclusive.<sup>7</sup> For example, California and Idaho extend veterans' preference in state employment to those who served at least 90 days of continuous active duty—half the length of the federal requirement.<sup>8</sup> At the other end of the spectrum, veterans' preference in Indiana not only requires an honorable discharge, but further specifies that an individual must have been discharged due to a disability or wound incurred during active duty.<sup>9</sup>

This state variation in how veterans are defined underscores the challenges facing former service members as they try to access benefits, and the confusion that can result as stakeholders working with veterans attempt to determine eligibility. In the criminal justice system, these stakeholders range from police and jail officials to prosecutors, judges, and correctional administrators. Without a clear definition of veteran status, assessing whether a person qualifies for any veteran-specific interventions is a challenge.

While details vary across jurisdictions, the most common criteria used to determine veteran status include length of military service, conditions of service, and how an individual was discharged from service. The role of each of these factors is briefly explored below.

### **Length of Military Service**

The importance of military service length for benefit eligibility depends on when that service occurred. Federal VA-benefit law does not specify a required length of military service for people who enlisted prior to September 8, 1980. For those who enlisted after this date, eligibility is contingent upon having served at least 24 months on active duty or completing the full term to which they were called to active duty. For federal veterans' preference in hiring, former service members may qualify if they complete a minimum term of 180 days of continuous active-duty service during certain periods of time.<sup>10</sup>

While some states follow these federal guidelines, others have reduced the length of service required for eligibility for certain state benefits, such as tuition assistance and home ownership programs.<sup>11</sup> Additionally, some states have shortened the length of service required for veterans to qualify for preferential hiring for state jobs. As noted earlier, California and Idaho reduced this requirement to 90 continuous days on active duty.<sup>12</sup> Rhode Island credits those who were discharged after 30 days of continuous service.<sup>13</sup> Other states have gone further, concluding that serving in uniform for any amount of time stands out as a defining characteristic of being a veteran. In Kentucky,

for example, any individual with an honorable or general discharge from active or reserve military service is eligible for veterans' hiring preference, regardless of the length of that service.<sup>14</sup>

### Conditions of Service

The federal government limits the definition of military service to those serving in one of the federally recognized military branches.<sup>15</sup> Members of a state National Guard or the Reserve component of an active force are excluded from being recognized as veterans unless they have been mobilized on active-duty orders to perform full-time duty. States have typically been more expansive; a majority recognize the sacrifices made by Reserve component members, especially those serving on orders of the governor to perform humanitarian missions within the state.<sup>16</sup> Ohio, for example, recognizes any individual who served as a member of the National Guard or Reserves and completed entry-level training as a benefit-eligible veteran.<sup>17</sup>

### Discharge Characterization

Military discharges can be characterized in two broad categories: honorable conditions (including the general discharge) or one of several different forms of "bad paper" discharges (i.e., dishonorable, bad conduct, and other than honorable). Dishonorable and bad conduct discharges are punitive and are assigned through a military court martial. Other than honorable discharges, by contrast, are not part of a criminal process but are instead designated through administrative procedures. Typically, these discharges are designated when an individual has engaged in misconduct as defined by the military, behavior that may reflect unfitness for duty as a result of symptoms of mental health or substance use disorders, mission readiness concerns, command culture, or other factors.<sup>18</sup>

While the overwhelming majority of service members are discharged under honorable conditions, the number receiving a bad paper discharge has grown significantly over time. Roughly 7% of all service members since 1980 have received a bad paper discharge,<sup>19</sup> though only 19% of these individuals were adjudicated through the court martial process.

Discharge designations can have a significant impact on a veteran's future. Perhaps most importantly, the federal government and nearly all states require veterans to have been discharged under honorable conditions to be eligible for benefits. There is a formal process for service members who receive a bad paper discharge to appeal their characterization, but only 10% do so, and just 13% of those appeals end in a successful change.<sup>20</sup>

Several states have passed laws to expand service eligibility to people receiving specific types of bad paper discharges. Maine, Rhode Island, and South Carolina have passed

laws to bar from benefits and services only those veterans with a dishonorable discharge (having been adjudicated by court martial), rather than all individuals with a bad paper discharge.<sup>21</sup> Other states have expanded eligibility to service members who received a bad paper discharge based upon their actual or suspected status of being lesbian, gay, bisexual, or transgender (Colorado, Nevada, and New Jersey, among others), or because they refused the COVID-19 vaccine (Wyoming).<sup>22</sup>

The uncertainty created by the variation in how bad paper discharges affect benefits is particularly important for justice-involved veterans. While making up approximately 7% of all discharges since 1980, veterans with bad paper discharges account for 18% of all incarcerated former service members.<sup>23</sup> The reasons for this disproportionality are unclear, but several factors associated with the receipt of a bad paper discharge have also been linked to justice system involvement; these include Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury, and Substance Use Disorder.<sup>24</sup> For example, one study found that 45% of individuals discharged for misconduct had at least one mental health or substance use disorder, a rate that is more than twice as large as those discharged under routine conditions (20%).<sup>25</sup>

***Taken together, these findings suggest that justice-involved former service members with bad paper discharges may be more likely to struggle with mental health and substance abuse issues, but less likely to receive helpful interventions because they are not officially defined as veterans.***

## **HOW VETERANS ARE DEFINED AND IDENTIFIED WITHIN THE CRIMINAL JUSTICE SYSTEM**

The broad variation in how veterans are defined by the federal government and states creates special complexities for former service members who make contact with the criminal justice system. Additional problems arise because of the system's reliance on self-reporting to identify veteran status. As a result, many former service members who would likely qualify for veteran-specific programs operated by the courts, correctional facilities, and communities are missing out.

### **Veteran Identification in the Criminal Justice System**

While asking individuals if they are a veteran may seem like a straightforward method for identifying who may be eligible for veteran-specific services and programs, the reality is more complicated. For example, individuals who served briefly in the military, who did not serve on active duty or experience a deployment, who are not eligible for certain veteran benefits, or who left the military with a bad paper discharge

may not see themselves as veterans.

Some veterans must also overcome shame or stigma when deciding whether to disclose their status to law enforcement or correctional authorities, while others hesitate because they fear harassment or a loss of benefits to their families during incarceration.<sup>26</sup> One formerly incarcerated veteran noted that he saw individuals fail to self-identify because they did not want to draw negative attention to themselves or their service; for his part, this former service member said he personally experienced harassment from a prison guard who was a fellow veteran and believed incarcerated veterans were tarnishing the reputation of the military.<sup>27</sup>

The VA has developed tools to allow correctional agencies to identify veteran status independently—the Veterans Reentry Search Service (VRSS) and the Status Query and Response Exchange System (SQUARES). But utilization of these systems remains low.<sup>28</sup> Further, such systems may fail to identify certain individuals as veterans due to the various definitions in use.

Ultimately, a failure to identify veteran status may lead to a denial of services that have been specifically designed to aid justice-involved former service members, such as sentencing mitigation statutes and Veterans Treatment Courts.

### **Sentencing Mitigation Statutes and Rules**

Prior to 2010, the U.S. Federal Sentencing Guidelines excluded veteran status as a mitigating factor during a sentencing hearing in federal court. But after the U.S. Supreme Court recognized “a long tradition of according leniency to veterans in recognition of their service,” especially for those who “fought on the front lines,”<sup>29</sup> this consideration was revised. Current federal guidelines allow mitigation consideration for any person who performed “military service,” as long as that service is “present to an unusual degree and distinguishes the case from” typical cases.<sup>30</sup> Importantly, this definition does not exclude any former service member based on the length of military service, the conditions of service, or how they were discharged from service, standing in contrast to the federal and state definitions discussed above.

Twelve states currently allow individuals to use veteran status as a mitigating factor during sentencing or as a factor to justify the departure from sentencing guidelines. Although some states have broadly defined eligibility for sentencing mitigation to include those who have “status as a servicemember”<sup>31</sup> and received an honorable discharge,<sup>32</sup> others have more narrowly defined veteran status. In Oklahoma, for example, only former service members who received a PTSD diagnosis directly resulting from military service are eligible for mitigation.<sup>33</sup> Similarly, New Hampshire requires a pre-sentence investigation to determine whether a veteran has been diagnosed with any mental illness before that individual's treatment options from the VA

or other resources can be introduced and considered for sentence mitigation.<sup>34</sup>

### **Veterans Treatment Courts**

Many jurisdictions offer a range of programs designed to divert eligible veterans away from incarceration and into community supervision and supportive programming. For example, an estimated 600 Veterans Treatment Courts across the country seek to connect eligible veterans to behavioral health treatment or other services while allowing them to remain in the community.

While some states have adopted the VA definition of who is a veteran to determine Veterans Treatment Court eligibility,<sup>35</sup> others, such as Nevada, have expanded eligibility to include anyone who has served in the armed forces, Reserves, or the National Guard, with no specified term of service or discharge characterization required.<sup>36</sup> Notably, this broad definition largely mirrors that from the Model Veterans Treatment Court Act drafted by the Uniform Law Commission.<sup>37</sup> Not all states, however, have expanded eligibility for the specialized courts. Utah, for example, requires that a veteran be eligible for VA health care benefits in order to engage in a Veterans Treatment Court.<sup>38</sup> Further, according to one national survey from 2015, 35% of Veterans Treatment Courts did not permit veterans with bad paper discharges.<sup>39</sup>

### **The Comprehensive Addiction and Recovery Act of 2016**

One recent change in how the federal government defines veteran status within the context of the criminal justice system came with the approval by Congress of the Comprehensive Addiction and Recovery Act of 2016. A sweeping legislative response to the opioid crisis, the law included language that identified certain “qualified veterans” who could benefit from access to federally funded criminal justice programs.

Under the act, such veterans were defined as those who:

- served on active duty in any branch of the armed forces, including the National Guard or Reserves; and
- were discharged or released from service under conditions other than dishonorable. The law further makes an exception for those with a dishonorable discharge designation if it was attributable to a substance abuse disorder.<sup>40</sup>

In some ways, the act demonstrated lawmakers’ interest in liberalizing standards for veteran participation in criminal justice programs. The absence of a specific active duty term of service required for eligibility is one example of this intent, as is the exception permitting eligibility for certain veterans with dishonorable discharges. But the use of the “conditions other than dishonorable” standard, along with the requirement for a

demonstrable link between a substance abuse disorder and a discharge designation, are barriers that create confusion and limit the number of veterans who benefit.

## CONCLUSION AND POLICY RECOMMENDATION

How veteran status is defined varies widely across federal and state governments, as well as criminal justice agencies and programs. While one might assume that the VA has the primary responsibility to define precisely who should be considered a veteran, the definitional standard has been expanded or narrowed through law and policy over time in states and jurisdictions across the nation. For the most part, differences in the definition are based on the length of military service, the conditions of service, and how an individual was discharged from service. As a result of this variation and the ambiguity about who qualifies as a military veteran, veterans' access to benefits, services, and programs in the community, in courtrooms, and within correctional settings like jails and prisons is confusing and constrained.

The plethora of veteran definitions along with the heavy reliance on self-identification within the criminal justice system may discourage former service members from confirming their status when asked. Some clearly make this choice due to stigma and/or a fear of harassment and loss of benefits.

The complexity in defining and identifying veterans means that programs set up to aid those who served our country when they intersect with the criminal justice system are not reaching all who are eligible. A clear, universal definition of who is a veteran within the criminal justice system and a better process for independently verifying veteran status would address that gap, ensuring that more people who served in the military and become justice involved can access treatments and services addressing the specific challenges they face. That, in turn, will help advance safety and justice for all.

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<sup>1</sup> Torresi, B. (2005). Operation rewarding sacrifice: A proposal to amend the definition of veteran in title 5 to fully effectuate the purposes of veterans' preference. *Pennsylvania State Law Review*, 110, 209. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/dlr110&div=14&id=&page=>

<sup>2</sup> VA News. (2016, Mar 26). *Veteran ID cards: What your options are now and in the future*. VA.Gov. <https://news.va.gov/26568/veteran-id-cards-options/>

<sup>3</sup> A veteran for the purpose of the VA Veteran's Identification Card requires that: "You served on active duty, in the Reserves, or in the National Guard (including the Coast Guard), **and** you received an honorable or general discharge (under honorable conditions)." See: U.S. Department of Veterans Affairs. (2016). *How to apply for a veteran ID card*. <https://www.va.gov/records/get-veteran-id-cards/vic/>; As an alternative to the veteran ID Card, veterans may obtain a Proof of Service Letter with the same eligibility requirements. U.S. VA News. (2016, Jun 21). *Clarification: The eBenefits alternative to the VA ID card "Veteran proof of service" letter*. VA.Gov. <https://news.va.gov/27178/clarification-the-ebenefits-alternative-to-the-va-id-card-veteran-proof-of-service-letter/>

<sup>4</sup> California found that only 2.7% of incarcerated people self-identified as veterans, while the Veteran Reentry Search Service (VRSS) database identified 7.9% of the state's incarcerated population as

veterans. See: Pelletier, D. (2022). *Identifying the veteran population within the criminal justice system*. Justice for Vets: Dispatch from the Front Lines. <https://justiceforvets.org/wp-content/uploads/2022/05/Identifying-the-Veteran-Population-Within-the-CJS-2022.pdf>

<sup>5</sup> U.S. Census Bureau. (2021). *Veterans glossary*. <https://www.census.gov/topics/population/veterans/about/glossary.html>

<sup>6</sup> See Veterans' Benefits – Definitions, 38 U.S.C. § 101(2) (2020).

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section101&num=0&edition=prelim> which defines a veteran as “a person who served in the active military, naval, or air service, and who was discharged therefrom under conditions other than dishonorable.”

<sup>7</sup> See veterans' preference statutes for all 50 states: Sutton, M. D. (2014). Forging a new breed: The emergence of veterans' preference statutes within the private sector. *Arkansas Law Review*, 67, 1081.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/arklr67&div=44&id=&page=>

<sup>8</sup> Discrimination, Ca. Mil. & Vet. Code, 394 § 980(a)(2)(A) (2021). <https://casetext.com/statute/california-codes/california-military-and-veterans-code/division-2-the-military-forces-of-the-state/part-1-the-state-militia/chapter-7-privileges-and-penalties/section-394-discrimination>; Service Members, Veterans, Spouses and Dependents, “Veteran” defined, Id. Code § 65-203(1) (2001). <https://legislature.idaho.gov/statutesrules/idstat/title65/t65ch2/sect65-203/>

<sup>9</sup> Preference for Appointment of Veterans, In. Code § 5-9-3-1 (2017). <https://law.justia.com/codes/indiana/2017/title-5/article-9/chapter-3/section-5-9-3-1/>

<sup>10</sup> Minimum Active-Duty Service Requirement, 38 U.S.C. § 5303A(b) (2016).

<https://www.law.cornell.edu/uscode/text/38/5303A>; Veteran, Disabled Veteran, Preference Eligible, 5 U.S.C. § 2108(1)(B) & (D) (2015). <https://www.law.cornell.edu/uscode/text/5/2108>

<sup>11</sup> For a list of state education benefits, see: American Legion. (n.d.). Veterans education benefits by state.

[www.legion.org/education/statebenefits](http://www.legion.org/education/statebenefits)

<sup>12</sup> California Code, Military and Veterans Code § 980 (a) (2) (A) (2019). <https://codes.findlaw.com/ca/military-and-veterans-code/mvc-sect-980/>; Service Members, Veterans, Spouses and Dependents, “Veteran” defined, Id. Code § 65-203(1) (2001). <https://legislature.idaho.gov/statutesrules/idstat/title65/t65ch2/sect65-203/>

<sup>13</sup> Public Officers and Employees- Placement of Names on Employment Lists, Ri. Gen. Laws § 36-4-19(b)(2) (2012).

<http://webserver.rilin.state.ri.us/Statutes/TITLE36/36-4/36-4-19.htm>

<sup>14</sup> Interview Preference for Current Service Members, Honorably or Generally Discharged Former Service Members, and Members' Spouses, Surviving Spouses, and Dependent Parents – Required, Ky. Rev. Stat. § 18A.150(1)(a) (2019).

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=48896>

<sup>15</sup> For eligibility requirements, including active service in “the Army, Navy, Air Force, Marine Corps, and Coast Guard,” “as a commissioned officer of the Public Health Service,” and “as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessors,” see: Szymendera, S. D. (2016). *Who is a “veteran”?: Basic eligibility for veteran's benefits*. Congressional Research Services.

<https://sgp.fas.org/crs/misc/R42324.pdf>

<sup>16</sup> Sutton, M. D. (2014). Forging a new breed: The emergence of veterans' preference statutes within the private sector. *Arkansas Law Review*, 67, 1081.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/arklr67&div=44&id=&page=>

<sup>17</sup> Personnel – Examinations, Oh. Rev. Code § 124.23(c)(2) (2012). <https://codes.ohio.gov/ohio-revised-code/section-124.23>

<sup>18</sup> The Veterans Legal Clinic at the Legal Services Center of Harvard Law School. (2020). *Turned away:*

*How VA unlawfully denies health care to veterans with bad paper discharges*. OUTVETS, Legal Services Center of Harvard Law School, and Veterans Legal Services. <https://www.legalservicescenter.org/wp-content/uploads/Turn-Away-Report.pdf>

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> “Veteran” means a person who has served on active duty in the United States Armed Forces including the Reserves of the United States Armed Forces and the National Guard and received a discharge other than dishonorable.” See: Veteran Preference, Me. Rev. Stat. 5, § 7054-B(1)(B) (2015).

<https://legislature.maine.gov/statutes/5/title5sec7054-B.html>; For an example of a statute which permits eligibility for those in receipt of “other than a dishonorable discharge,” see: Placement of Names on Employment Lists – Listing of Veterans, Ri. Gen. Laws § 36-4-19(b)(2) (2021).

<https://law.justia.com/codes/rhode-island/2021/title-36/chapter-36-4/section-36-4-19/>;

For an example of a statutes which extends benefits to those “released from . . . service other than by dishonorable discharge, see: Veteran's Unclaimed Cremated Remains – Definitions, Sc. Code § 25-12-20(1)(d) (2014). <https://www.scstatehouse.gov/code/t25c012.php>

<sup>22</sup> To trace the development of the “restoration of honor” movement across U.S. states (p. 695-698), see: Seamone, E. R. (2021). Beyond "Restoration of Honor": Compensating Veterans for the Psychological Injuries of the Gay and Transgender Bans. *William & Mary Journal of Race, Gender, & Social Justice*, 28, 687.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/wmjw128&div=28&id=&page=>; see also: Common Law, Statutes and Rules of Construction – Definitions, Wy. Stat. § 8-1-102 (n.d.)

<https://wyoleg.gov/statutes/compress/title08.pdf>

<sup>23</sup> Bronson, J., Carson, A., Noonan, M., & Berzofsky, M. (2015). *Veterans in prison and jail, 2011-12* (NCJ 249144). Washington, DC: Bureau of Justice Statistics.

<https://bjs.ojp.gov/content/pub/pdf/vpj1112.pdf>

<sup>24</sup> U.S. Government Accountability Office. (2017). *DOD health: Actions needed to ensure post-traumatic stress disorder and traumatic brain injury are considered in misconduct separations* (Report no. GAO-17-260). Washington, DC: U.S. Government Printing Office. <https://www.gao.gov/products/gao-17-260>

<sup>25</sup> Brignone, E., Fargo, J. D., Blais, R. K., Carter, M. E., Samore, M. H., & Gundlapalli, A. V. (2017). Non-routine discharge from military service: Mental illness, substance use disorders, and suicidality. *American Journal of Preventive Medicine*, 52(5), 557-565. <https://doi.org/10.1016/j.amepre.2016.11.015>

<sup>26</sup> Ahlin, E. M., & Douds, A. S. (2020). If you build it, will vets come? An identity theory approach to expanding veterans’ treatment court participation. *Criminal Justice Review*, 45(3), 319-336.

<https://doi.org/10.1177/0734016820914075>

<sup>27</sup> R. Self, Founder and Executive Director, Veterans Healing Veterans from the Inside Out, personal communication, January 9, 2023.

<sup>28</sup> Council on Criminal Justice. (2022). *From service through reentry: A preliminary assessment of veterans in the criminal justice system*. <https://counciloncj.org/veterans-justice-commission/>

<sup>29</sup> Porter v. McCollum, 558 U.S. 30, 43 (2009). <https://supreme.justia.com/cases/federal/us/558/30/>

<sup>30</sup> Although what constitutes an “unusual degree” of military service and the characteristics that distinguish one individual's service from another have not been specified, this guideline is often interpreted to imply that the individual must have performed well in their service. See: U.S. Sentencing Guidelines Manual. (2021). § 5H1.11- military, civic, charitable, or public service; employment-related contributions; record of prior good works (policy statement).

<https://guidelines.ussc.gov/gl/%C2%A75H1.11>

<sup>31</sup> Considerations in Determining Aggravation or Mitigation, Or. Rev. Stat. § 137.090(2)(a) (2017).

[https://oregon.public.law/statutes/ors\\_137.090](https://oregon.public.law/statutes/ors_137.090)

<sup>32</sup> For an example of the inclusion of an honorable discharge from the United States Armed Forces as a mitigating factor sentencing, see: Alabama Sentencing Commission. (2019). *Presumptive and voluntary sentencing standards: Manual*.

<https://sentencingcommission.alacourt.gov/media/1089/2019-presumptive-manual.pdf>;

Nc. Gen. Stat. § 15A-1340.16(e)(14a) (2022).

[https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter\\_15a/gs\\_15a-1340.16.pdf](https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter_15a/gs_15a-1340.16.pdf)

<sup>33</sup> Mitigating Factors for Veterans – PTSD, Ok. Stat 22 § 973a(c) (2016).

<https://oksenate.gov/sites/default/files/2019-12/os22.pdf>; For an additional example directing the sentencing court to “consider the offender's military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses,” see: Seriousness of Crime and Recidivism Factors – Oh. Rev. Code § 2929.12(F) (2014). <https://codes.ohio.gov/ohio-revised-code/section-2929.12>

<sup>34</sup> Presentence Investigation of Members and Veterans of the Armed Forces, Nh. Rev. Stat. § 651:4-b.1 (2015).

<https://law.justia.com/codes/new-hampshire/2015/title-lxii/chapter-651/section-651-4-b>

<sup>35</sup> For an example of Veterans Treatment Court eligibility criterion that specify “the court in which the criminal case is pending must have found that the defendant is a veteran of the United States Armed Forces” as defined in Title 38 USCS, see: Veterans Treatment Court Program, Ms. Code § 9-25-1(3)(a) (2018). <https://codes.findlaw.com/ms/title-9-courts/ms-code-sect-9-25-1.html>; see also: Veterans Treatment Court Act – Definitions, Ut. Code § 78A-5-302 (2021).

<https://le.utah.gov/xcode/Title78A/Chapter5/78A-5-S302.html>

<sup>36</sup> Veteran Defined, Nv. Rev. Stat. § 176A.090 (2009). <https://www.leg.state.nv.us/nrs/nrs-176a.html#NRS176ASec090>, used to determine Veterans Treatment Court eligibility: Determination if Defendant is a Veteran to Member of the Military; Alternative Program of Treatment, Nv. Rev Stat § 5.057(3)(b) (2020).

<https://law.justia.com/codes/nevada/2020/chapter-5/statute-5-057/>

<sup>37</sup> This model law can be found at

<https://www.uniformlaws.org/committees/community-home?CommunityKey=3c91a212-1d3d-4768-9adf-ce809a43f66b>

<sup>38</sup> Veterans Treatment Court Act – Definitions, Ut. Code § 78A-5-302 (2021).

<https://le.utah.gov/xcode/Title78A/Chapter5/78A-5-S302.html>

<sup>39</sup> Baldwin, J. (2015). Investigating the programmatic attack: A national survey of veterans treatment courts. *Journal of Criminal Law & Criminology*, 105(3).

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/jclc105&div=26&id=&page=>

<sup>40</sup> Comprehensive Addiction and Recovery Act of 2016, Public Law 114-198 § 502 (Jul. 22, 2016).

<https://www.congress.gov/bill/114th-congress/senate-bill/524/text>; Codified in: Adult and Juvenile Collaboration Programs – Assisting Veterans - Definitions, 34 U.S.C. § 10651(i)(1)(B)(i)-(ii) (2022).

<https://www.law.cornell.edu/uscode/text/34/10651>