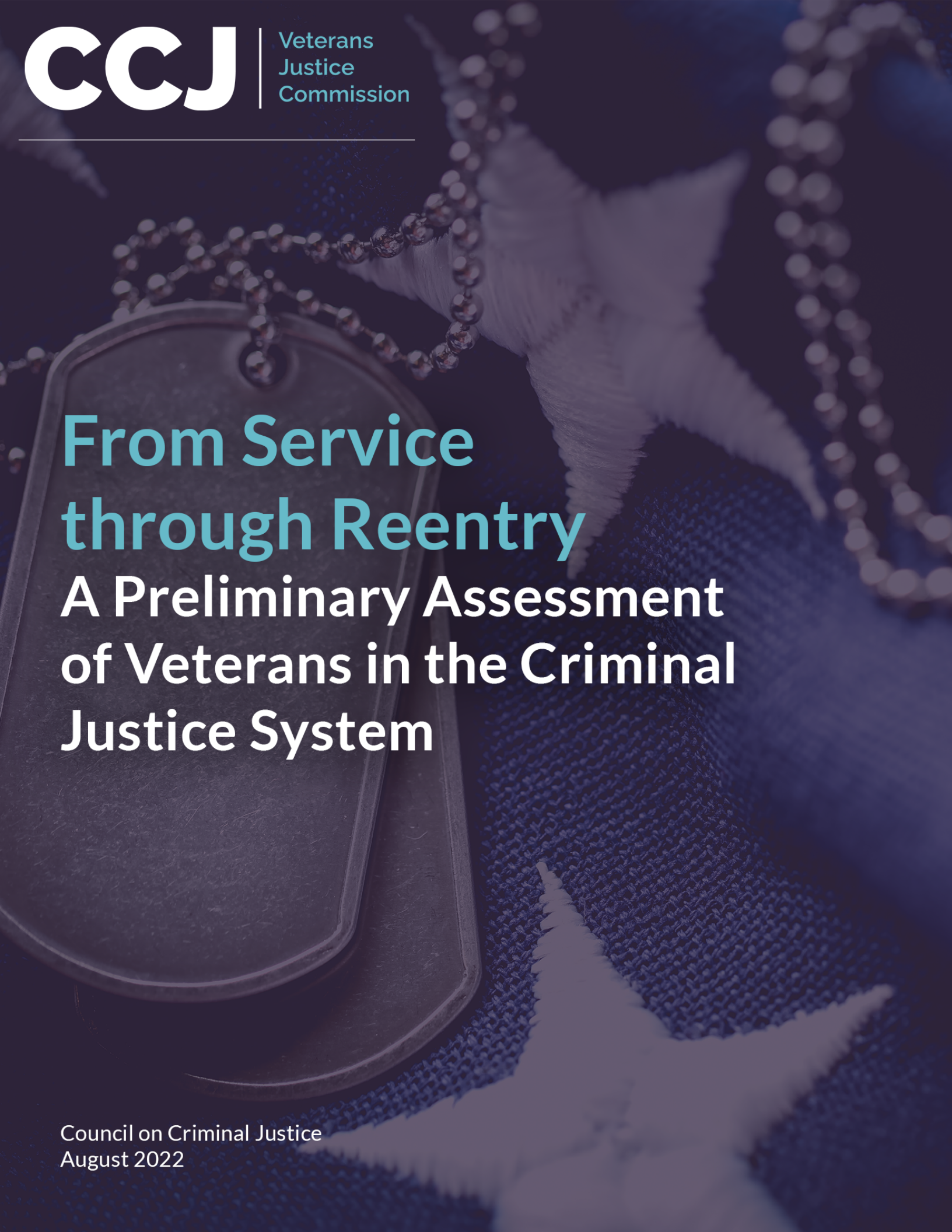
CCJ | Veterans Justice Commission



From Service through Reentry

A Preliminary Assessment of Veterans in the Criminal Justice System

Council on Criminal Justice
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ABOUT THE COUNCIL

The Council on Criminal Justice is an invitational membership organization and think tank. Independent and nonpartisan, the Council works to advance understanding of the criminal justice policy choices facing the nation and build consensus for solutions that enhance safety and justice for all.

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ABOUT THE PROJECT

The Veterans Justice Commission is a multi-year research, policy development, and communications project that will document and raise awareness of the unique challenges facing veterans in the civilian justice system and build consensus for evidence-based reforms that enhance safety, health, and justice. The project spans the full scope of the justice system—from arrest and diversion through prosecution, incarceration, release, and community supervision—with a particular focus on veterans' transition from active service to civilian life.

This report is a preliminary assessment to ground the Commission's work, which will further examine the challenges and develop proposed solutions for policy and practice. The findings and conclusions in this report were not subject to the approval of the Council's Board of Directors or its Board of Trustees.

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Introduction

Military life is highly structured. Service members are told what to do and when to do it. They are routinely thrust into stressful and often violent situations—circumstances that are hard for most civilians to imagine—yet they are supported and surrounded by the training and resources of the U.S. Department of Defense (DoD).

The world following military service is quite different. Veterans must fend largely for themselves in the civilian economy and society. Roughly 200,000 active-duty service members leave the armed forces each year, and most transition successfully, demonstrating often extraordinary resilience in the face of a wide array of risk factors and obstacles. Others struggle—with mental health and substance use disorders, the aftereffects of traumatic brain injury, homelessness, and criminality.

Approximately one third of veterans self-report having been arrested and booked at least once, compared to fewer than one fifth of civilians.[1] According to the last comprehensive count, there were 181,500 veterans in American prisons and jails.[2] A separate survey showed that nearly 8% of those incarcerated in state prisons and more than 5% of people in federal prisons were veterans.[3] There are more veterans imprisoned in the U.S. than there are total prisoners in all but 14 other countries,[4] but their numbers represent a tiny fraction of the total U.S. veteran population–just 1%.

In recent years, innovations such as veterans treatment courts and veteran-only housing units in jails and prisons have emerged, seeking to improve support for former service members through specialized approaches. The Veterans Administration (VA), whose mission is to provide care and support for veterans and their families, has launched efforts to help justice agencies better identify veterans and to facilitate their access to programming. But many challenges–and opportunities–remain.

This document summarizes the current state of knowledge about veterans in the civilian justice system. It highlights the service-related factors that increase risk for veterans' justice system contact and reviews existing programs and services designed to address that risk at three critical points in time: (1) the transition from active-duty military service to civilian life; (2) arrest through criminal sentencing (the "front end" of the justice system); and (3) incarceration through reentry into communities after release (the "back end" of the system).

Overall, studies show that service-related trauma exposure, combined with increased incidence of mental health and substance use disorders, elevates veterans' risk of justice system involvement. Veterans who served in the military since September 11, 2001 may be especially at risk, in part because they are younger and more racially diverse than the general public and they have seen more combat deployments–and redeployments–than

any previous cohort of service members. Combat deployment is strongly associated with the development of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). Veterans with multiple deployments are three times more likely than service members who were not previously deployed to develop PTSD, and estimates indicate that 20% of post-9/11 veterans experienced a probable TBI during deployment. PTSD and TBI symptoms fuel substance misuse, increase risk for separation from the military under "other than honorable" circumstances, and are associated with crime and justice involvement for veterans.

Despite these findings, more research is needed to understand precisely how military service and risk factors interact to increase veterans' likelihood of contact with the criminal justice system.

KEY TAKEAWAYS

- ***Transition from military service to civilian life creates a range of difficulties for many veterans.***
- ***Research has identified what makes people more or less likely to engage in criminal behavior, but the evidence on whether veterans have a different set of risk and protective factors is thin.***
- ***Deployment-related trauma exposure and increased incidence of mental health and substance use disorders elevate veterans' risk of making contact with the justice system.***
- ***Research has found robust associations between PTSD, traumatic brain injury, substance use disorders, and both aggressive behavior and criminal justice system involvement for veterans.***
- ***Basic data on the nature and extent of veterans' involvement in the justice system are lacking; few justice agencies participate in VA systems that identify veterans.***
- ***A growing number of veterans are ineligible for VA benefits despite not having engaged in bad conduct or criminal behavior during military service.***
- ***Veterans who lose VA benefits because of incarceration struggle to re-enroll at reentry, increasing their risk of poor outcomes.***
- ***Most veterans in prison (69%) are serving time for violent crimes; nearly twice as many veterans as non-veterans are serving life sentences.***
- ***Special in-prison housing units and other programs serving justice-involved veterans have proliferated, but rigorous evaluation of these initiatives is lacking and their fidelity to evidence-based models is unknown.***

VETERANS' RISK FACTORS

More than 1.3 million personnel are on active duty across the Army, Navy, Air Force, Marine Corps, and Coast Guard.[5] Active-duty service members are relatively young–nearly two-thirds are under 30–and they are, overall, more racially diverse than the general population.[6] Nearly half (47%) of active-duty service members identify as persons of color or biracial,[7] compared to 40% of the general public.[8] The majority are male, but women's engagement in active-duty service has grown steadily over the past 20 years, reaching more than 17% in 2020.[9] Though there is no exact count and sources differ in their estimates, there were approximately 19 million military veterans in 2021, encompassing those who served in Iraq, Afghanistan, Vietnam, Korea, World War II, and other conflicts and postings over the past century.[10]

More than four million Americans have served in the military since the attacks on our nation on September 11, 2001. Evidence suggests that post-9/11 veterans struggle more with their transition to civilian life because of the particularly challenging nature of their service.[11] Roughly three-quarters of post-9/11 veterans were deployed at least once, compared to 58% of veterans who served before them, and post-9/11 veterans are about twice as likely as their pre-9/11 counterparts to have served in an active combat zone. Research indicates that post-9/11 veterans (and other veterans drawn from the all-volunteer era) may have a higher risk of criminal justice system involvement when compared to veterans of earlier service eras and to non-veterans,[12] although this finding is not consistent across studies.[13]

Scholars hypothesize that justice-involved veterans are likely to have higher rates of combat deployment, adverse childhood experiences, post-traumatic stress[14] and other mental health issues, substance use, and homelessness. But the data underlying these findings are largely drawn from 2004 or earlier, and results are mixed.[15] Below is a review of research on several key factors that may elevate the risk of criminal justice involvement for veterans.

COMBAT-RELATED TRAUMA AND POST-TRAUMATIC STRESS

Once individuals join the military, they are at increased risk for experiencing a range of traumatic events, including exposure to actual or threatened death, serious injury, or sexual violence.[16] Across a wide range of populations, experiences of trauma have been linked to multiple symptoms, including aggression, impulsivity, hypervigilance, misappraisal of threat, sensation seeking, fear, anxiety, depression, and suicidal thoughts and behaviors.[17] Although not all people who experience trauma have lasting negative effects or are diagnosed with mental health or substance use disorders, approximately one third of pre-9/11 veterans and

half of post-9/11 veterans report that deployment negatively affected their physical and mental health.[18]

As many as one third of veterans develop post-traumatic stress disorder (PTSD). Veterans with multiple deployments are three times more likely than service members who were not previously deployed to screen positive for PTSD.[19] *Other PTSD risk factors include younger age, non-majority racial identity, female gender, enlisted rank, low educational attainment, pre-deployment history of trauma or mental health disorder, and post-deployment social support stressors*[20]*—factors prevalent among post-9/11 veterans. As of June 2021, 1.2 million veterans were receiving compensation for service-connected PTSD.*[21]

TRAUMATIC BRAIN INJURY

The incidence and prevalence of traumatic brain injury (TBI) is elevated among military personnel and veterans. The Centers for Disease Control and Prevention define TBI as an "injury that disrupts the normal function of the brain."[22] *TBI is associated with memory loss, altered mental state, temporary or permanent neurological deficits, decreased levels of consciousness, and intracranial lesions.*[23] *Although mild TBIs may not impair judgment or decision-making, moderate and severe TBIs have more intensive and longer-lasting negative consequences. Estimates indicate that approximately 20% of post-9/11 veterans–nearly one million people–experienced a probable TBI during deployment,*[24] *a figure that scholars say may underreport actual prevalence.*[25] *TBI increases the risk for a range of additional cognitive impairment and mental health disorder diagnoses over time, from PTSD and anxiety disorders to schizophrenia and psychotic disorders. These correlations are strongest for TBI and PTSD; for affected veterans, having a TBI is correlated with a 44% increase in later PTSD diagnosis.*[26]

SUBSTANCE USE DISORDERS

Alcohol use disorders are the most prevalent type of substance use disorder among veterans, [27] *although opioid use disorder diagnoses have increased over time.*[28] *Studies show that 27% to 40% of post-9/11 veterans misuse alcohol.*[29] *In 2020, 525,000 veterans were treated for substance use disorders by the VA and more than 1.7 million received mental health care.*[30] *In a study of more than 450,000 Iraq and Afghanistan veterans seeking first-time care from the VA between 2001 and 2010, more than 11% received a substance use disorder diagnosis.*[31] *Among this group, 10% of veterans were diagnosed with alcohol use disorder, 5% were diagnosed with a drug use disorder, and 3% of veterans received both an alcohol and drug use*

disorder diagnosis. Substance use is strongly correlated with a variety of mental health disorder diagnoses. Veterans diagnosed with a substance use disorder were three to 4.5 times more likely to also be diagnosed with PTSD or depression. PTSD symptoms, specifically, increase risk for the development of substance use disorders among veterans.[32] Veterans with PTSD are more than twice as likely to report struggles with substance use or dependency (41%) compared to veterans without PTSD (20%).[33] Military-specific risk factors for substance use disorders include deployment, combat exposure, and challenges with the transition to civilian life.[34]

ADVERSE CHILDHOOD EXPERIENCES

Adverse Childhood Experiences (ACEs) include experiences of direct and witnessed interpersonal violence as well as family instability factors, such as having a parent with a mental health or substance use disorder.[35] The number of ACEs experienced by individuals has been associated with a range of negative outcomes, including increased incidence and prevalence of chronic physical health conditions, cancer, mental health and substance use disorders, and early death.[36] Research indicates that military veterans experience ACEs at higher rates than their non-veteran peers. Some research also shows, however, that for some individuals, military enlistment may provide a vehicle enabling them to escape abusive home environments.[37] Compared to non-veterans, veterans report significantly higher exposure to adverse events prior to their 18th birthday.[38] In a study of more than 13,000 veterans and 88,000 civilians, female veterans reported an average of 2.2 ACEs, compared to 1.7 ACEs among female civilians; male veterans reported an average of 1.7 ACEs compared to 1.3 among male civilians.[39] Separate studies indicate that 59% of female veterans and 39% of male veterans have experienced one or more ACE, with 5% of female veterans and 12% of male veterans reporting four or more exposures.[40]

MILITARY SEXUAL TRAUMA

Service members may also experience military sexual trauma, defined as sexual abuse, assault, or harassment that occurs during active-duty military service or training.[41] A meta-analysis of 69 studies indicated that 16% of military service members (38% of women and 4% of men) reported experiencing military sexual trauma.[42] Specifically, nearly one third (31%) of service members experienced harassment (53% of women and 9% of men) and 14% of service members experienced assault (24% of women and 2% of men).[43] People who experience military sexual trauma are significantly more likely to screen positive for PTSD, depression, anxiety, and substance use disorders when compared to other service members. Military

sexual trauma is associated with an increased risk for a range of mental health disorders, including PTSD, anxiety, depression, and substance use disorders.[44]

HOMELESSNESS AND HOUSING INSTABILITY

Military veterans are somewhat more likely than the general population to experience homelessness. While veterans make up 6% of Americans, surveys show they account for more than 7% of the homeless population.[45] ***Recurring episodes of homelessness are common among veterans. In a nationally representative survey of more than 1,500 veterans, 9% reported experiencing homelessness at some point in their adult life.***[46] ***These individuals reported being homeless for an average of nearly two cumulative years; only 17% reported having used VA homeless or social services.***

OVERLAPPING RISK FACTORS AND JUSTICE SYSTEM INVOLVEMENT

Deployment-related trauma exposure, combined with increased incidence of mental health and substance use disorders, elevate veterans' risk of contact with the justice system.[47] Not every veteran who experiences trauma or PTSD engages in criminal behavior. But those who do are more likely to have several risk factors that pre-dated their military service, as well as other risk factors acquired during service.[48] Post-9/11 veterans may be particularly at risk of criminal justice involvement. They are younger and more likely to be members of a minority racial or ethnic group than previous cohorts of veterans, which puts them at higher risk for arrest,[49] and they have seen more combat deployments and redeployments than any veteran cohort in our nation's history.

Research demonstrates robust associations between PTSD, TBI, substance use disorders, and both aggressive behavior and criminal justice system involvement for veterans.[50] PTSD and TBI, in particular, have been linked with such involvement – and elevated risk of rearrest.[51] Among veterans incarcerated in jails, nearly nine in 10 (87%) had experienced a traumatic event in their lifetimes and 39% screened positive for PTSD, compared to an estimated PTSD prevalence rate of 6% among the civilian population.[52] Among nearly 700 incarcerated veterans in Minnesota, the presence of TBI was associated with a 49% higher risk of rearrest and 85% higher risk of supervised release revocation.[53] Likewise, the presence of PTSD was associated with 64% higher supervised release revocation.[54] These findings align with a recent meta-analysis of 10 studies that found veterans with PTSD had a 61% higher chance of criminal justice system involvement than veterans without PTSD.[55]

Heightened exposure to trauma during military service and the development of subsequent PTSD also increase risk for substance use disorders,[56] engagement in intimate partner violence[57] and violent crime among veterans.[58] For example, veterans with PTSD have been found to perpetrate intimate partner violence at rates two to three times the national average.[59] Studies examining the role of PTSD and alcohol misuse among post-9/11 veterans have found that combat exposure and increased PTSD symptom severity[60] and the presence of both PTSD and alcohol misuse[61] predict engagement in violence. Specifically, in a study of nearly 1,400 post-9/11 veterans across the nation, 36% of veterans with PTSD and alcohol use disorder engaged in severe violence compared to 11% of veterans with alcohol use disorder only, 10% of veterans with PTSD only, and 5% of veterans who had neither PTSD nor alcohol use disorder.[62]

The Transition from Military to Civilian Life

In military parlance, "transition" describes a veteran's movement from service in the armed forces to civilian society. This process occurs across several dimensions, including medical, psychological, social, cultural, interpersonal, familial, professional, and financial.[63] Seeking to improve the transition experience for veterans, the DoD requires that all members participate in its Transition Assistance Program (TAP).[64] TAP was established in 1991 and updated in 2011 and 2019 to meet the evolving needs of service members. TAP includes an individualized transition plan, a career readiness assessment, engagement in a career pathways program, on-the-job apprenticeships, and counseling. TAP is a collaboration between three federal agencies—the Department of Labor, the VA, and the DoD–with no single agency or individual responsible for its success. Partner agencies split costs for the program. While an aggregate cost is not reported, in 2018 the DoD estimated it spent $100 million on transition.[65]

Despite these services, a 2019 survey found that 45% of veterans reported feeling inadequately prepared for the transition to civilian life.[66] Nearly two-thirds of veterans (61%) reported difficulty paying their bills following discharge, 42% said they have trouble obtaining medical care for themselves or their families, and 41% reported challenges with alcohol or drug misuse.[67]

TYPES OF MILITARY DISCHARGES

The military discharges a growing share of people without honorable-discharge status. Generally speaking, the military discharges enlisted personnel with one of five designations: honorable, general, other than honorable, bad conduct, and dishonorable. Bad conduct and dishonorable discharges are punitive in nature and are assigned through

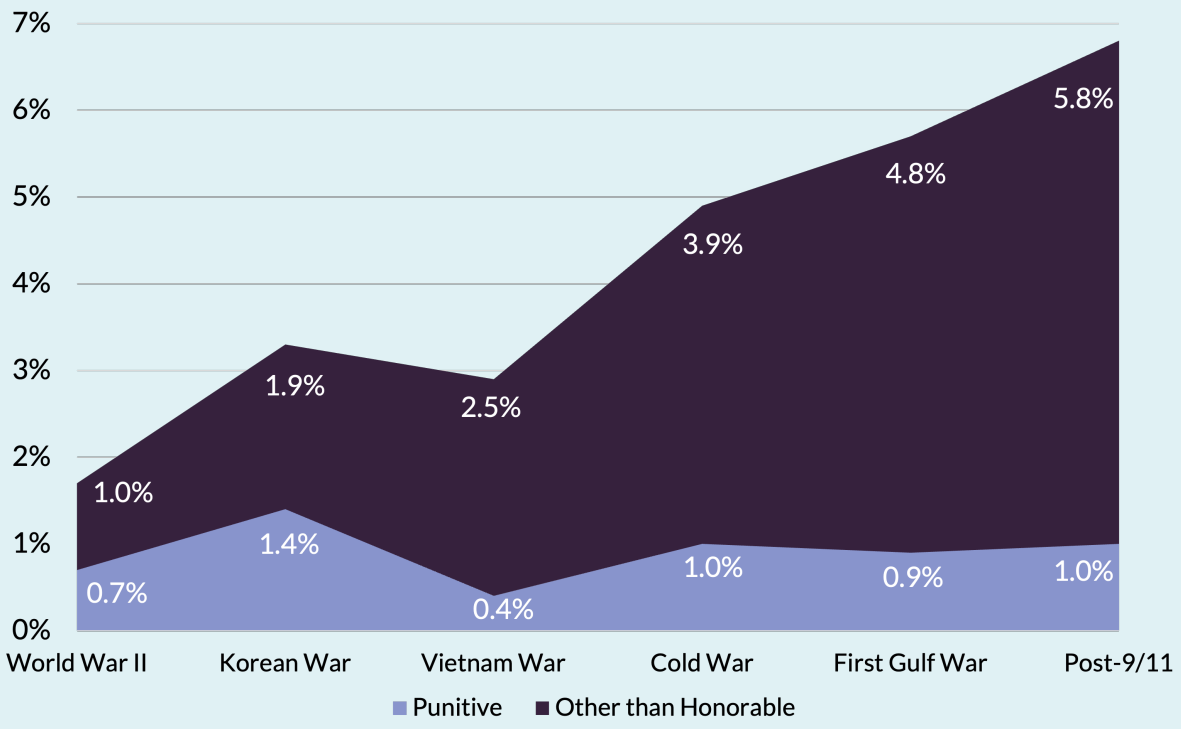
a military court martial, where service members retain legal representation. With other than honorable discharges, however, commanders make the designation outside of a legal process to regulate misconduct that has not led to a military-court conviction.

These three designations—dishonorable, bad conduct, and other than honorable (formerly known as the "undesirable discharge")—inflict a heavy penalty. Together, they are commonly referred to as "bad paper" discharges. Bad-paper veterans are presumed, pursuant to VA regulations, to have been discharged under dishonorable circumstances.[68] As such, bad-paper veterans may lose access to all VA benefits and programs.

Applicants for VA benefits with bad paper have the right to challenge the regulatory presumption, but only 10% do so; the large majority (87%) who appeal for access to benefits are unsuccessful.[69] This outcome may run counter to legislative intent, as Congress apparently envisioned that all veterans, except those with dishonorable discharges, would be entitled to undergo a thorough evaluation for VA benefit eligibility.[70]

These policies affect a growing share of veterans. Since World War II, the share of service members who receive an other than honorable discharge has increased fivefold. More

ENLISTED SERVICE MEMBERS WITH BAD PAPER DISCHARGES



Source: The Veterans Legal Clinic at the Legal Services Center of Harvard Law School, 2020.

than 6% of post-9/11 veterans receive such discharges annually,[71] with significant variation across the military branches. In 2011, the Marines discharged 10% of enlisted personnel under other than honorable conditions, while the Air Force discharged fewer than 1% under such circumstances.[72] Overall, more than 548,000 service members–representing about 7% of all characterized discharges–have received some type of bad paper discharge since 1980.[73]

Overlapping Risk Factors and Other Than Honorable Discharges. Researchers have identified multiple factors as potential drivers of the growth in other than honorable discharges. The symptoms of mental health disorders, mission readiness concerns, command culture, and discrimination based on race and sexual orientation are three such explanations.[74] Between World War II and the end of the "Don't Ask Don't Tell"[75] policy in 2011, the military assigned more than 100,000 active-duty service members an other than honorable discharge because of their actual or perceived LGBTQ status.[76]

Symptoms of both PTSD and TBI are strongly correlated with bad paper discharges.[77] According to the Government Accountability Office, 62% of the nearly 92,000 service members separated for misconduct between 2011 and 2015 had been diagnosed with PTSD, TBI, or other conditions that could be associated with misconduct within the two years prior to separation.[78] One reason cited for this linkage is that military superiors may assume that erratic behavior stemming from a mental health disorder represents a sign of bad character.[79] When a service member who commits misconduct has undiagnosed PTSD, superiors may assign a bad paper discharge without understanding the origins of the misbehavior.[80] Common PTSD symptoms can cause behavior contrary to military standards (e.g., failure to carry out duties, chronic tardiness, or failure to adhere to policy).[81] According to one study of more than 443,00 veterans who deployed to Iraq or Afghanistan and subsequently used VA services, 45% of those discharged for misconduct were diagnosed with at least one mental health or substance use disorder, compared to 20% of those discharged under routine conditions.[82] Specifically, a quarter of veterans discharged for misconduct had PTSD, compared to 12% of those discharged under routine conditions. Another study focused on deployed Marines found that those diagnosed with PTSD were 11 times more likely to be discharged for misconduct and eight times more likely to be discharged for substance misuse than Marines without a PTSD diagnosis.[83] The result is that many service members with PTSD are denied the very VA medical and mental health benefits intended to help them.

The Front End — Arrest through Sentencing

It is unclear how many veterans make contact with law enforcement and enter the "front end" of the criminal justice system. Information about how law enforcement, jails, and courts identify veteran status from arrested individuals is incomplete. This makes it difficult to know whether and how veterans are connected to available programs designed to address their risk and needs–and, beyond that, how many receive such support and whether these interventions are effective. Although national, cumulative arrest data on veterans is not available, one study found that nearly one third of veterans (31%) self-report that they had been arrested and booked one or more times in their lives, a rate significantly higher than among civilians (18%).[84]

IDENTIFYING VETERANS AS THEY ENTER THE SYSTEM

Identifying veterans as they come into contact with the criminal justice system is a critical first step toward appropriately handling their cases in court and forging connections to benefits and services. It is unknown how many of the roughly 18,000 law enforcement agencies, 3,100 jails, and myriad federal, state, and local courts have policies requiring staff to ask about veteran status, or how many rely on veterans to self-report their status. Expecting veterans to self-report their status is problematic.[85] Some justice-involved veterans report reluctance about self-identification because of shame, fear that they will be viewed as a threat, or concerns about losing VA benefits.[86,87]

In 2013, the VA created the Veterans Reentry Search Service (VRSS), a secure web-based tool that allows correctional facilities and other criminal justice partners to identify justice-involved people with prior military service.[88] In 2015, the VA designed a second search tool known as the Status Query and Response Exchange System (SQUARES) to identify veterans for homelessness assistance; it has since been extended to law enforcement, which can use it to quickly access military service records for defendants or incarcerated individuals.[89] The use of these tools by criminal justice agencies, however, remains uneven and sparse. In 2021, only 11% of the estimated 3,100 local jails used VRSS, while 15 out of 18,000 law enforcement agencies nationwide (fewer than one hundredth of one percent) used SQUARES.[90] It is unclear why participation in the two systems is so low and whether the use of these programs has been effective in the few places they have been implemented.

DEFLECTION AND DIVERSION PROGRAMS

Most arrested veterans will spend some period of time in jail, where, as with other subpopulations, programs tailored to their unique needs are rare. The VA, local governments, and community organizations have developed multiple initiatives to assist veterans who come in contact with the criminal justice system, including programs to divert them away from incarceration. But information on their prevalence and research on their effectiveness are limited. Three of the most common front-end approaches are detailed below.

Veterans Response Teams. Some communities have created Veterans Response Teams to help deflect veterans away from arrest during encounters with local law enforcement. These teams include specialized officers trained to deescalate situations involving veterans in crisis because of symptoms of PTSD, TBI, and other service-related injuries. After a crisis is resolved, team members connect veterans with treatment and other community resources as needed. Even where these interventions exist, however, there is some evidence that many veterans who would be candidates for participation are not identified due to their reluctance to disclose their veteran status. These individuals are less likely to engage in healthcare and mental health and substance use disorder treatment, which increases their risk for arrest and incarceration, the loss of VA benefits, and homelessness.[91]

Veterans Justice Outreach. To divert veterans away from incarceration after they come in contact with the criminal justice system, the VA in 2009 created the Veterans Justice Outreach Program, whose specialists—primarily social workers at VA medical centers—work with law enforcement, jails, and courts to identify justice-involved veterans and facilitate access to VA services.[92] Although the program served more than 138,000 veterans between 2016 and 2020, participation is hampered by limited awareness of its existence among veterans, difficulties with identifying veterans in jail settings, and, for veterans with bad paper discharges, a lack of awareness of their eligibility for certain VA services. To date, research on program outcomes is limited, although legislation to improve implementation and assess program effectiveness has been introduced.[93]

Veterans Treatment Courts. Veterans Treatment Courts are perhaps the most common standardized front-end intervention that enables some veterans to avoid long-term confinement and access supportive resources.[94] Modeled after drug and mental health courts,[95] such courts serve veterans diagnosed with mental health and/or substance use disorders, typically using a treatment team comprised of a judge, VA employees, and veteran peer mentors.[96] More than 600 Veterans Treatment Courts [97] and other veteran-focused courts operate across the nation.

Currently, Veterans Treatment Courts serve a narrow segment of the justice-involved veteran population, with many courts placing restrictions on types of cases they will hear. For example, a national survey of such courts found that 57% excluded at least one type of violent felony charge and more than one-third (35%) excluded veterans who had been dishonorably discharged from service.[98] Further, Veterans Treatment Courts are unevenly distributed across the nation, with some states running 20 or more courts and others with four or fewer.[99] Data on the number of veterans served by these courts are not readily available.

The different protocols among Veterans Treatment Courts make it difficult to conduct generalizable and rigorous research on outcomes.[100] But one national study of nearly 8,000 participants across 115 VA sites found that at program exit, the number of veterans in their own housing increased from 48% to 58% and the number of veterans receiving VA benefits increased from 38% to 50%. Employment however, only increased by 1% - from 27% to 28%.[101] Approximately one-fifth of program participants received jail sanctions and 14% experienced a new incarceration during their time in the program. In another study comparing Veterans Treatment Courts participants to non-participants, veterans in the treatment court were more likely to have their own housing at program exit (67%) than non-participants (41%) and more likely to be employed (33% compared to 16%).[102]

SENTENCING

Sentencing data for veterans is limited, particularly for those sentenced to probation or those who receive a deferred prosecution. For those sentenced to incarceration, a higher proportion of veterans (80%) than non-veterans (70%) receive sentences of five years or more. [103] Additionally, a higher proportion of incarcerated veterans (24%) than non-veterans (13%) are serving life sentences.[104]

Some courts consider military service as a mitigating factor at sentencing, but this consideration often is limited to those with honorable discharges.[105] Similarly, some deferred prosecution statutes allow veterans to avoid a conviction even after they plead or are found guilty, if they can prove they suffer from an applicable condition stemming from military service, such as PTSD, TBI, or other service-related trauma.[106] This option has only recently become available in a limited number of jurisdictions and the number and rate of veterans' deferred prosecutions are unknown.

The Back End — Corrections through Reentry

Sentenced veterans enter the "back end" of the criminal justice system, where they face a range of unique challenges during incarceration, at release, during their reentry into the community, and, for those who release to probation or parole, during their post-release community supervision.

INCARCERATION

More than 107,000 veterans were incarcerated in state and federal prisons in 2016, the most recent year for which national prison data are available. Earlier estimates indicate that in 2011-2012, roughly 131,500 veterans were incarcerated in prisons and 50,000 veterans were confined in jails.[107] Veterans accounted for nearly 8% of those incarcerated in state prisons and more than 5% of people in federal prisons.[108] These levels represented a 6% decrease in the number of veterans in prison since 2004, and a 25% decrease in the number of veterans in jail.[109] Despite that decline, in 2011-2012, more veterans were held in U.S. prisons than total prisoners in all but 14 countries that, after the globe-leading United States, have the largest total prison populations (China, Brazil, India, Russian Federation, Turkey, Thailand, Indonesia, Mexico, Iran, Philippines, South Africa, Vietnam, Egypt, and Ethiopia).[110] More veterans are incarcerated in the U.S than total prisoners in the 208 countries for which prison population data is available.[111]

STUDIES OF INCARCERATED VETERANS SHOW THAT:

- ***They are overwhelmingly male (98%) and are, on average, 51 to 52 years old.[112] In contrast, incarcerated non-veterans are, on average, 38 to 40 years old. Like the overall incarcerated population, the age of veterans in prison has been rising steadily over the last 20 years.***
- ***Approximately half of incarcerated male veterans self-identify as White, one in four as Black, one in 10 as Hispanic/Latino, and more than one in 10 as multiracial.[113]***
- ***More than two-thirds of veterans in prison (69%) were convicted of violent crimes, compared to 57% of non-veterans. Of those, the share serving time for non-sexual violent crimes (43%) is similar to that for the non-veteran population. The share of veterans in prison for violent sexual offenses (26%) is more than double that for non-veterans.[114]***
- ***The majority of incarcerated veterans were discharged under honorable conditions, but about 18% of those in prison and jail received a bad paper discharge.[115] As noted previously, the***

share of veterans with bad paper discharges has reached a high of 6%, meaning that veterans with such discharges are highly overrepresented in prison.[116]

For veterans struggling with PTSD or other trauma symptoms, many aspects of incarceration can resemble deployment to a combat zone, and mental health providers observe that incarcerated combat veterans often adopt the "survival mode" characteristics of those engaged in combat operations.[117] While the nationwide prevalence of TBI among incarcerated veterans is not known, one study analyzing Washington State Department of Corrections data found that veterans who self-report TBI have increased use of in-prison medical services, higher rates of violent in-prison misconduct, and an increased likelihood of experiencing solitary confinement.[118]

Critical gaps remain in what is known about the population of incarcerated veterans. The data above come from sporadic studies using samples of the inmate population or snapshots in time without detailed trend data. Most states do not track or publish veteran-specific information. The absence of comprehensive and current data on the number of veterans in jails and prisons complicates efforts to understand and address their risks and needs.

IN-PRISON PROGRAMS AND SERVICES FOR VETERANS

Some jails and prisons have established targeted programming and specialized housing units for veterans.

Veterans Housing Units. States and counties designed these units to create a supportive environment for incarcerated veterans and facilitate the delivery of tailored programs.[119] As of 2022, there were veteran-only housing units operating in 46 county jails, 74 state prisons, and three federal prisons across 33 states.[120] Trained staff typically operate the units, and incarcerated veterans assist and serve as peer mentors.

Although the use of veteran-only housing units appears to be a promising step, such units offer vary widely, making their appeal to veterans and overall effectiveness difficult to evaluate. For example, in a veteran-only housing unit in Connecticut, more than half (56%) of incarcerated veterans said the unit made them feel safer, but fewer than a third (31%) said the specialized environment had helped them receive mental health treatment.[121] An evaluation of a veteran-only housing unit developed jointly by the San Diego County Sheriff's Department and local VA administrators reported that unit residents had "significantly fewer custodial infractions" and were "significantly less likely to be convicted for a new offense at 12-months post-release" when compared to a historical group of incarcerated veterans who did not live in the unit.[122] Overall, however, research on the rehabilitative impact of the veteran-only housing model is thin.[123]

Veteran-Specific Programming. Little is known about the scope and effectiveness of veteran-specific programs delivered during custody, whether in veteran-only housing units or to veterans in the general prison population. Programs vary widely in the range of services they offer, and very few programs have been evaluated for effectiveness. Some programs partner with the VA to help incarcerated veterans apply for benefits prior to release;[124] others focus on incarcerated women veterans,[125] provide education, or offer individual and group therapy and treatment for mental health and substance use disorders. Still others engage incarcerated veterans through peer support networks.

Veterans eligible for VA-funded health services are disconnected from such benefits during incarceration.[126] Thus, absent their participation in veteran-specific programs, they typically receive the general services provided by the correctional facility. These services may or may not be tailored to meet the specific risks and needs of veterans, as is the case for other incarcerated subpopulations. Specifically, even prison programming that includes a focus on trauma may not address veterans' unique challenges related to combat, military sexual trauma-related PTSD, or the aftereffects of TBI.[127] Given that, veteran-specific behavioral health conditions may not be effectively addressed during incarceration, creating additional challenges for veterans as they leave prison and return home.

REENTRY CHALLENGES

People leaving prison are at high risk for death during reentry.[128] One study found that in the first two weeks following release, formerly incarcerated individuals are nearly 13 times more likely than other state residents to die.[129] The highest risk for death is from substance use disorders; individuals reentering from prison are 129 times more likely than the general population to die from a drug overdose.[130] Other causes include cardiovascular disease, homicide, and suicide.

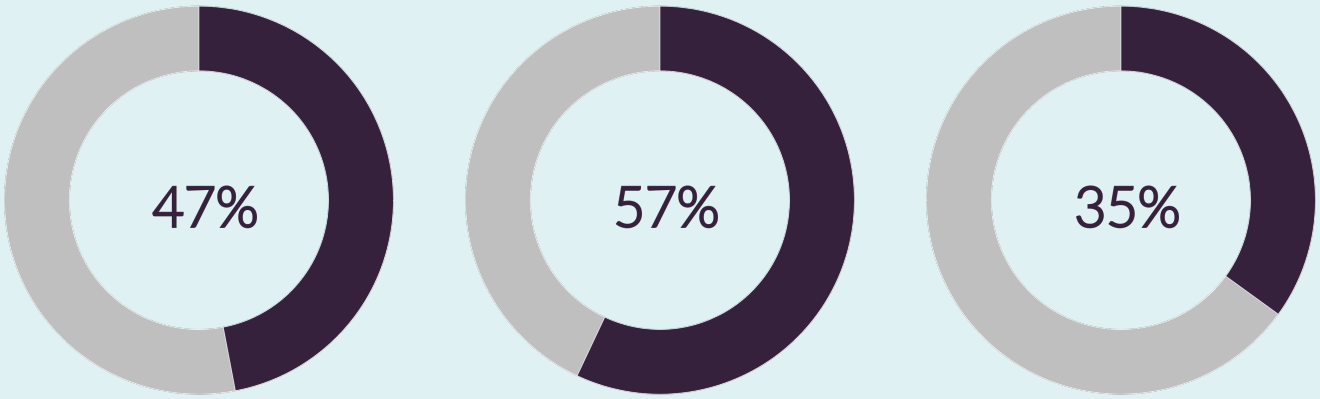
When adjusted for demographic factors, the post-incarceration mortality risk for veterans is not significantly higher than that of non-veterans.[131] A study of Washington State Department of Corrections data concluded that VA benefits may reduce the likelihood of mortality during reentry by all causes.[132]

Elevated prevalence of mental health and substance use disorders has been well documented among the general population of Americans under probation or parole supervision,[133] but less is known about the post-release veteran population. High rates of mental health and substance use disorders among incarcerated veterans[134] and insufficient treatment capacity for affected individuals during custody[135] suggest that many veterans may experience behavioral health issues during the reentry period. Among veterans who connected with a post-release VA outreach program, 57% were diagnosed with a mental health disorder and half (47%) were diagnosed with a substance use

disorder.[136] About one third (35%) were diagnosed with co-occurring mental health and substance use disorders.

MENTAL HEALTH & SUBSTANCE USE DISORDERS

Among over 18,000 veterans who connected with a post-release VA program, 69% were diagnosed with at least one mental health or substance use disorder.



Source: Finlay, 2017.

Employment is one of the most well-documented barriers to successful reentry for individuals leaving prison.[137] Formerly incarcerated people have an unemployment rate of over 27%,[138] and approximately one third of reentering individuals do not obtain work within four years of their release.[139] While employment rates for previously incarcerated veterans are not readily available, factors such as substance use and longer incarceration episodes are correlated with a decreased likelihood of securing a job interview among veterans.[140] Still, given their service background, veterans enter the civilian job market with what would appear to be advantages in terms a range of skills, experiences, and training.

Unemployment exacerbates another challenge facing veterans reentering society–housing instability. In a national sample of veterans connected to a VA outreach program, 30% were identified as having experienced homelessness within the past three years, a rate five times that for men in the general population.[141] People who are unemployed and unhoused are at greater risk for criminality.[142]

REENTRY SUPPORT

Several federal, state, and local programs have been launched to help veterans transition from incarceration to the community. The VA's Veterans Justice Program partners with criminal justice agencies to identify reentering veterans and link them to VA and community services.[143] The Health Care for Reentry Veterans program, created by the VA in 2007, is the primary vehicle aiding veterans in prison, though Veterans Justice Outreach program specialists may also assist veterans during their reentry transition.

The Health Care for Reentry Veterans program provides targeted outreach to incarcerated veterans at 81% of state and federal correctional facilities across all 50 states and links them to healthcare treatment and other transition resources.[144] By identifying incarcerated veterans and connecting them with such services, the program aims to facilitate readjustment to community life and reduce homelessness and recidivism.[145] One study examined post-release outcomes for more than 31,000 veterans who received at least one "outreach visit" from the program while in prison. Results indicate that 56% of veterans leaving prison had contact with the VA health care system within a year of their outreach visits. Among veterans who received an outreach visit, 52% with a mental health diagnosis and 39% with a substance use disorder engaged in VA-funded treatment one year after their diagnosis.[146] Though other outreach results have not been evaluated, research shows that sustained treatment for mental health and substance use disorders among veterans with criminal justice contact is associated with better long-term criminal justice outcomes.[147]

Once released from incarceration, most people are placed under supervision in the community by parole officers. In 2020, more than 3.8 million individuals–or 1 in 66 U.S. adult residents–were under some form of post-release supervision, a significant decline from the peak of 1 in 45 adults in 2008.[148] Due to data gaps, it is unclear how many veterans might be under probation or parole supervision after they leave incarceration and return home. One nationally representative study indicated that 2% of veterans were on probation and fewer than 1% were on parole, supervised release, or other conditional release after prison.[149]

Although rates of reincarceration are well documented for individuals leaving incarceration more broadly, national analyses of recidivism among veterans have not been conducted. Descriptive research on incarcerated male veterans, however, indicates that in 2016, 55% to 65% of that population had experienced at least one prior incarceration and an average of two to three previous incarcerations.[150]

Conclusion and Next Steps

This report is a preliminary assessment of the current evidence about American veterans' interactions with the civilian criminal justice system across four categories: risk factors, transition from service, and the so-called front and back ends of the justice system. From that vantage point, this document showed that veterans, and especially post-9/11 veterans, face unique risk factors for criminal justice involvement, ranging from multiple combat deployments to high PTSD rates and housing insecurity. For the 200,000 people who annually transition out of the military, the exit programs that await them often fail to meet expectations. In addition, increasing numbers of service members are leaving the armed forces with other than honorable discharges, which in almost all cases bar VA benefits.

At the front end of the criminal justice system, veterans are far more likely to be arrested and booked than civilians, yet they are under-identified and receive widely varying treatment in deflections and diversions from prosecution and at sentencing. At the back end, there is continued under-identification of veterans, high rates of PTSD and TBI, disparate in-prison programming, and multiple impediments to successful reentry.

This initial assessment is intended to inform the deliberations of CCJ's Veterans Justice Commission, which held its first meeting on August 18, 2022. Former U.S. Defense Secretary and U.S. Senator Chuck Hagel chairs the Commission, which also includes former U.S. Defense Secretary and White House Chief of Staff Leon Panetta and 13 other leaders in science, the judiciary, the recovery field, healthcare, corrections, law enforcement, veterans affairs, and the military. The Commission's charge is to study the challenges facing veterans and develop evidence-based, nonpartisan solutions that reduce veteran involvement in the criminal justice system and enhance safety, health, and justice.

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