
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 776 **Hearing Date:** April 4, 2017
Author: Newman
Version: March 27, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Corrections: Veterans Benefits*

HISTORY

Source: California State Commanders Veterans Council

Prior Legislation: AB 2263 (Bradford) -- Chapter 881, Statutes of 2016

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association

Opposition: None known

PURPOSE

The purpose of this legislation is to require the California Department of Corrections and Rehabilitation (CDCR) to have an employee at each state prison, other than a correctional officer or custodial employee, who is trained and accredited by the Department of Veterans Affairs to assist incarcerated veterans in applying for and receiving any federal veterans benefits for which they may be eligible.

Existing federal law limits the veterans' benefits a veteran may receive while he or she is incarcerated for a felony, except provides a 60-day grace period where the incarcerated veteran may still receive full benefits. The withholding of benefits begins on the 61st day of incarceration. (38 U.S.C.S. § 5313(a)(1); 38 C.F.R. § 3.666(a).)

Existing federal law states that an incarcerated veteran is entitled to full benefits while he or she is participating in a work-release program or is residing in a halfway house. (38 U.S.C.S. § 5313(a)(2).)

Existing federal law allows the dependents of an incarcerated felon to receive an apportionment of the benefits to which the incarcerated veteran would have been entitled, unless the dependent is incarcerated for a felony. (38 U.S.C.S. § 5313(b).)

Existing federal law prohibits compensation on behalf of a veteran for any period during which he or she is a "fugitive felon." (38 U.S.C.S. § 5313B; 38 C.F.R. § 3.666(n).)

Existing federal law defines a “fugitive felon” as a person who is a fugitive by reason of:

- a) Avoiding prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
- b) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law. (38 U.S.C.S. § 5313B(b).)

Existing state law requires restoration of withheld benefits if a conviction is overturned on appeal. (38 C.F.R. § 3.666(m).)

Existing state law authorizes each county board of supervisors to appoint a county veterans service officer to perform specified veterans-related services, including assisting veterans in pursuing claims for federal or state veterans’ benefits. (Military and Veterans Code § 972.)

Existing state law contains a number of provisions aimed at assisting California veterans, such as farm and home loan assistance (Military and Veterans Code §§ 987.50 *et seq.*), business enterprise opportunities (Military and Veterans Code §§ 999 to 999.13), and educational assistance (Military and Veterans Code §§ 981 *et seq.*).

Existing state law requires CDCR to develop guidance policies relative to the release of veterans who are inmates. The policies shall be developed with the intent to assist veterans who are inmates in pursuing claims for federal veterans’ benefits, or in establishing rights to any other privilege, preference, care, or compensation provided under federal or state law because of honorable service in the military. In developing the policies, the department may coordinate with the Department of Veterans Affairs and the county veterans service officer or veterans service organizations. (Military and Veterans Code § 1840; Penal Code § 2695.)

Existing state law requires that at each facility that is under the jurisdiction of CDCR, a veterans service organization may volunteer to serve as a veterans service advocate. (Penal Code § 2695.1.)

Existing law states that the advocate must be authorized to develop a veterans economic recidivism prevention plan for each inmate who is a veteran during the 180-day period preceding the inmate’s release date. And, that the veterans economic recidivism prevention plan for each inmate who is a veteran shall include, but not be limited to, the following:

- Facilitating access of the inmate to county veterans service officers, California Department of Veterans Affairs and United States Department of Veterans Affairs officers and personnel, so that the inmate may pursue claims for federal veterans’ benefits or any other privilege, preference, care, or compensation provided under federal or state law because of the inmate’s service in the military.
- Developing a plan for how the inmate will access earned veterans’ benefits that he or she may be eligible for upon the inmate’s release.

(Penal Code § 2695.2 (a) and (b).)

Existing law requires that, to assist with the development and execution of the veterans economic recidivism prevention plan, CDCR do both of the following:

- Facilitate access by the advocate to each inmate who is a veteran.
 - Access by the advocate is subject to those department screening and clearance guidelines and training requirements that are imposed on other visitors and volunteers.
 - Access by the advocate must be allowed to the extent it does not pose a threat to the security or safety of the facility, or to inmates and staff.
- Provide the advocate with access to existing resources, including, but not limited to, computer and Internet access, that would assist the advocate in implementing the veterans economic recidivism prevention plan, to the extent it does not pose a threat to the security or safety of the facility, or to inmates and staff.

(Penal Code § 2695.2 (c).)

Existing law requires that CDCR provide a copy of the veterans economic recidivism prevention plan shall be provided to the inmate prior to the inmate's release. (Penal Code § 2695.2 (d).)

Existing law requires the advocate to coordinate with the United States Department of Veterans Affairs in order to provide each inmate who is a veteran with access to earned veterans' benefits. (Penal Code § 2695.3.)

Existing law requires the advocate to coordinate with the California Department of Veterans Affairs and the county veterans service officer in the county in which the facility is located for advice, assistance, and training, and to evaluate the effectiveness of the veterans economic recidivism prevention plan. (Penal Code § 2695.4.)

This bill requires CDCR to provide at each state prison, an employee, other than a correctional officer, who is trained and accredited by the Department of Veterans Affairs to assist incarcerated veterans in applying for and receiving any federal veterans benefits for which they may be eligible.

COMMENTS

1. Need for This Bill

According to the author:

According to the California Department of Corrections and Rehabilitation (CDCR), California's total in-custody population is approximately 128,000 inmates, which includes approximately 6,800 incarcerated veterans (5.3%).

Access to veterans' benefits, including low-income pensions, Veterans Administration (VA) health care, and disability compensation, can serve as vital support resources to incarcerated veterans upon their transition out of state custody as they undertake efforts toward reintegration into general society. Currently, County Veteran Service Officers (CVSOs) are the most important

resources in assisting veterans in accessing the federal and state veteran benefits for which they may be eligible. Despite frequent assumptions to the contrary, a large number of incarcerated veterans are fully eligible for a wide range of benefits as a result of their service prior to their incarceration. Unfortunately, in many counties where state prisons are located, CVSOs are overworked in serving the many and varied needs of their local veteran populations and consequently may have difficulty servicing the incarcerated veteran population in a timely manner.

At CDCR's Correctional Training Facility in Soledad, two incarcerated veterans have operated a functioning veteran services Office for more than a decade. Supervised and supported by a correctional officer, they have helped more than 1,000 other incarcerated veterans access a wide range of VA benefits. These two Soledad inmates have worked closely and with good effect with the accredited CVSOs at the nearby Monterey County Office of Military and Veterans Affairs.

Unfortunately, programs like this do not exist at other institutions and there is an inherent risk to operating a program where inmates are collecting and maintaining the personal information, such as names, social security numbers, and family member information, of other inmates. While this has not been an issue so far, this information should, as a matter of policy, be properly collected and maintained by a trained and accredited correctional officer.

In 2014 the Legislature enacted AB 2263 which authorizes a veterans service organization (VSO) – such as the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Vietnam Veterans of America, etc. – to volunteer to serve as a veterans service advocate at each facility under CDCR's jurisdiction to assist veteran inmates with securing specified benefits upon their release.

AB 2263 was a very helpful step forward but left most needs of incarcerated veterans unmet. This is because AB 2263 was inadequate as follows:

- a. The bill did not require the veterans service advocates to be trained and accredited to represent veterans with the federal VA.
- b. Although not required to be, some of the VSO advocates are accredited, but they are overloaded with outside duties and lack the bandwidth to address inmate needs. This is the same sort of funding and manpower problem the county veterans service officers face in being unable in many counties to help incarcerated veterans.
- c. The bill did not standardize the type and degree of access an advocate should have and some prisons facilitate well while others do not.

The experience of the inmate-run veterans office at CTF Soledad shows how successful an inside-the-prison advocacy and claims operation can be; however, that model is not reliable for replication system wide and the need exists in every correctional facility.

SOLUTION: SB 776 would require CDCR to provide, at each state prison, a correctional officer who is trained and accredited by the CA Department of Veterans Affairs (CalVet) to assist incarcerated veterans in applying for and receiving any federal veterans' benefits for which they may be eligible. This will provide an in-house support for incarcerated veterans, both those with long sentences and those approaching release, and their families. It will also increase coordination with and provide support for CVSOs, who remain underfunded despite modest increases in recent years.

2. Effect of Legislation

An article appearing in Science Daily on March 13, 2007, discussed a study conducted by the University of California-San Francisco and the San Francisco Veterans Affairs Medical Center finding that approximately one-third of veterans returning from Iraq received one or more mental health or psychosocial diagnoses. (See *Mental Illness Appears Common among Veterans Returning from Iraq and Afghanistan*, Science Daily (Mar. 13, 2007).) Another study reported in the New England Journal of Medicine in 2004 stated that the rate of post-traumatic stress syndrome (PTSD) among Iraq and Afghanistan veterans increased in a linear manner with increased exposure to combat. (Hoge, *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care* (2004) 351 N. Engl. J. Med. 13-22.)

Studies also indicate that PTSD may drive or exacerbate drug and alcohol abuse by veterans. (*Stress & Substance Abuse: A Special Report*, National Institute on Drug Abuse (Sept. 12, 2005).) In a Bureau of Justice study, 35% to 45% of incarcerated veterans reported symptoms of mental health disorders in the previous 12 months, including mania, psychotic disorders, and major depressive episodes. (Noonan & Mumola, U.S. Dep't of Justice, *Veterans in State and Federal Prison, 2004* (2007).) Three-quarters of veterans in state prisons reported past drug use and one-quarter reported being on drugs at the time of the offense for which they were incarcerated. (*Id.* at p. 5.)

Veterans appear to be disproportionately represented in the prison population. Veterans make up 10% of state prisoners. (Noonan & Mumola, *supra*, at p. 1.) By 2004, veterans of the current conflicts in Iraq and Afghanistan already comprised 4% of the veterans in state and federal prisons. (*Id.*)

The goal of this legislation is to reduce recidivism among veterans by providing incarcerated veterans with assistance in planning and pursuing claims for federal veterans' benefits.

-- END --