17. LEGISLATIVE AND COURT REFORM

Laws and judicial programs can assist, or create barriers to, a veteran child support initiative. The following recommendations are based on promising practices in a number of jurisdictions.

**Identify Laws That Create Barriers to Homeless and At-Risk Veterans, Such as Interest on Child Support Debt**

Based on feedback from the HHS-VA-ABA pilot sites, many of the veterans participating in the pilot are Vietnam-era veterans with adult children, rather than more recently returning veterans. These cases are often arrears-only cases, that is, there is no current support obligation remaining. Nonetheless, this debt keeps increasing in those states that charge interest. The impact of interest on arrearages is consistent with findings in a report by the Office of the Inspector General, U.S. Department of Health and Human Services. That report found that large child support arrearages accumulated in part because states charged interest on the principal and established orders with retroactive balances.¹⁹

If state law charges interest on child support arrears, a child support agency may want to determine what percentage of the overall child support arrearages owed on its caseload is due to interest. The agency may also want to evaluate the effect of the interest rate. Does the interest rate provide an incentive for noncustodial parents to pay arrearages and/or deter the accumulation of arrearages? Is the interest rate so high it is counterproductive and increases the debt to an amount that becomes unpayable and discourages parents from attempting to pay?

**Focus on Legislation That Gives the Child Support Agency Authority to Stay Enforcement or Compromise Arrears Owed to the State**

The 2007 report by the Office of the Inspector General, U.S. Department of Health and Human Services, also focused on state laws and policies regarding arrears compromise. At that time, child support agencies in 20 states operated fully implemented or pilot debt
compromise programs, and another 23 states settled arrearage debt on a case-by-case basis. As of September 2011, 44 states and the District of Columbia have policies to compromise child support debt owed to the state.

For example, the California Compromise Arrears Program (COAP) is a program for eligible noncustodial parents to reduce — not eliminate — the child support arrears they owe to the state for payments the state made to the family while the parent’s children were on public assistance or in foster care. Any reduction is arrears and interest is based on the noncustodial parent’s income and assets. It also must take into consideration the needs of the children named in the child support order. The Los Angeles County Bar Association works with qualifying veterans to help them meet their obligations responsibly and address uncollected arrearages through the COAP.

**Review Your State Support Guidelines to See How They Address Veterans Benefits, Including Apportionments for Children**

Veterans may receive a number of military benefits, including service-connected disability compensation, a VA pension (a needs-based benefit paid to wartime veterans, who meet certain age or non-service connected disability requirements), and education and training benefits. Many child support guidelines do not expressly address veterans benefits. When they do, it is usually in the definition of income. Some of the veteran benefits provide for dependent payments. Very few guidelines expressly address these payments. If your state or tribal support guidelines address veterans benefits, ensure that child support caseworkers and legal partners assisting veterans have a common understanding of what the law, regulation, or court rule provides. If your state or tribal support guidelines do not address veterans benefits, consider whether treatment of such benefits is an appropriate topic for the next guideline review.
Explore with the Court and Local Bar Association the Interest in, and Feasibility of, Establishing a Veterans Problem-Solving Court

- Veterans Treatment Court
  - Incarcerated Veterans
    
  In 2015, the Department of Justice issued a report focusing on veterans incarcerated in federal and state prisons, as well as local jails.\textsuperscript{26} Findings were based on data from the National Inmate Survey, conducted between February 2011 and May 2012. According to the report:
    - There were 181,500 incarcerated veterans.
    - The total incarceration rate for veterans was lower than the rate for nonveterans.
    - A greater percentage of veterans than nonveterans were sentenced for violent offenses.
    - Most veterans in prison and jail reported that they did not experience combat while serving.
    - Almost half of veterans in prison and jail had served in the military for less than three years.
    - More than three-quarters of incarcerated veterans had received an honorable discharge or a general discharge under honorable conditions.
    - Veterans were more likely than nonveterans to report that a mental health professional had told them at some point in their lives that they had a mental health disorder.
    - Veterans in prison and jail were more than twice as likely to report having been told they had posttraumatic stress disorder (PTSD) than nonveterans.
  - Overview of Veterans Treatment Courts
    
  Mental health issues and substance abuse are widely regarded as the primary risk factors for homelessness and incarceration among veterans. The Rand Corporation has found that one-third of Iraq and Afghanistan veterans suffer from PTSD, TBI, or major depression, attributed to long deployments and a high rate of exposure to combat.\textsuperscript{27} A Veterans Treatment Court is a type of problem-solving court. It is based
on the principles of drug court and mental health court, where substance abuse counseling or mental health treatment is offered as an alternative to incarceration.

The Honorable Robert Russell established the first veterans court in Buffalo, New York, in 2008, in response to the growing number of veterans that he saw appearing in his Drug Court and Mental Health Court dockets. He witnessed the “transformative power of military camaraderie when veterans on his staff assisted a veteran in one of his treatment courts.”28 He also recognized the need to better connect veterans with the benefits to which they were entitled. Judge Russell asked his local U.S. Department of Veterans Affairs Medical Center and volunteer veterans in the community to join in creating a new court docket that would focus exclusively on justice-involved veterans.29

A Veterans Treatment Court diverts eligible veteran defendants charged with criminal offenses, who also have substance dependency and/or mental illness, to a specialized criminal court docket.30 The veteran may be at high risk for reoffending and/or becoming homeless. The veteran voluntarily participates in a judicially supervised treatment plan that an interdisciplinary team develops with the veteran. Typically the team includes representatives of the court, the Veterans Health Administration and Veterans Benefit Administration, the state’s Department of Veterans Affairs office, veterans service organizations, employment-focused agencies, veteran peer mentors, health care professionals, and mental health professionals.31

There are now more than 340 veterans courts in the United States. The most obvious distinction between a veterans court and other problem-solving courts is that it limits participation to current or former members of the military.

Some of the other differences include:

- The veterans court team includes at least one member who is familiar with veteran and military culture, terminology, benefits, and any other veteran or military issues that may arise.
The treatment provider(s) should understand posttraumatic stress disorder, traumatic brain injury, military sexual trauma, and other issues often associated with military service and how they can impact a veteran’s behavior.

- It uses mentors who are current or former veterans.
- Peer mentors support the participant, increasing the likelihood that the veteran will remain in treatment. They also help with housing, employment linkages, transportation, navigating military benefits, disability compensation claims, and discharge status.

- Partners with whom the veterans court coordinates include veteran service providers.

In the criminal court context, participants in a Veterans Court who complete the treatment plan have all qualifying charges reduced or dismissed, or traditional sanctions waived, including — where appropriate and feasible — more serious charges, commensurate with completion of appropriate treatment and services.

Recognizing the important role such courts can play in preventing veterans from ending up incarcerated and in helping them connect with community-based treatment alternatives, the U.S. Department of Veterans Affairs initiated the Veterans Justice Outreach (VJO) initiative. Through the VJO initiative, more than 200 social workers provide services to each of the V.A. Medical Centers throughout the country and serve as a resource to enable the judicial system to divert veterans to VA residential recovery programs and therapeutic services.

**Child Support within Issues Addressed by a Veterans Treatment Court**

Although veterans treatment courts handle criminal cases, in some jurisdictions the court — as part of the holistic treatment plan — also addresses civil issues such as child support that can impact the veteran’s ability to meet his or her obligations to self, court, and community. There was no consensus among the nine HHS-VA-ABA pilot sites regarding the desirability of including child support within the context of a veterans treatment court. Some pilot participants felt that the veteran facing criminal prosecution had so many serious issues — chemical, mental health — that it was not appropriate to address child support in that forum. Other participants agreed that
other issues may have priority, but believed that at some point it was appropriate to put child support issues on the table. As one participant noted, child support is another barrier facing the criminally charged veteran that the veteran needs to address to have greater personal and financial stability.

One of the pilot sites explored the possibility of the child support agency providing on-site services for veterans before or after their veterans court hearing. The initial plan was that veterans with support issues would meet with a child support professional before or after the veteran court hearing, and the child support professional would then work with the veteran and his or her peer advocate to work out solutions that would keep child support issues from hindering the veterans’ overall success. It was determined, however, that the low number of veterans in this jurisdiction’s Veterans Court who had child support issues did not warrant a regular on-site presence of the child support agency.

Another approach would be for the child support agency to request an opportunity to provide the veterans’ peer advocates with information about child support. Then if a peer advocate became aware that the veteran had a child support issue, the advocate could provide the veteran with information about how to contact the agency. Rather than child support being a formal part of Veterans Court, this approach is an informal way to address child support issues.

In Cook County, Illinois, the Director of Cook County State’s Attorney’s Alternative Prosecution and Sentencing Unit, which includes several veterans treatment courts, agreed to refer veterans with child support issues to the Cook County Parent Support Services.

In Orange County, California, because of the number of civil issues that veterans in veterans treatment court also faced, the court offers free office space to the Legal Aid Society of Orange County. Legal Aid attorneys are available to meet with veterans on civil issues, including child support.

- **Special Court Calendar for Child Support**

  Another option to explore is establishment of a certain time period on the civil child support calendar for cases involving homeless or at-risk veterans. A set day would allow
the veteran service provider to assist the veteran in getting to court and would help the legal partner address the legal needs of more veterans. The feasibility of this option will depend upon whether a jurisdiction has a sufficient number of veteran child support cases to make a special calendar cost-effective. A pilot participant noted that there might be enough cases to justify such a docket if the child support agency was better able to identify veterans in its caseload.

A separate veteran child support docket could also provide an opportunity to address more holistically other issues a homeless or at-risk veteran may have such as referral to employment services or substance abuse counseling. It could also provide an opportunity to have an on-site VA social worker or mental health worker to provide information about VA services, should such resources be available.

- Child Support Court in Conjunction with Stand Down

Another option is to explore the establishment of a child support court in conjunction with the Stand Down event. The pilot site of San Diego has coordinated such a court since 2009. To ensure the effectiveness of a child support court in conjunction with Stand Down, there needs to be a strong coordinator; advance registration of veterans so caseworkers can review their child support cases in advance; and a passionate team of court, child support, and veteran service provider personnel working together. More information about Stand Down events is in Section 13, “Child Support Agency – Participating in Stand Down Events.”

- Measuring Outcomes of a Veteran Problem-Solving Court

In its report on Veterans Treatment Courts, the American Bar Association stressed the importance of measuring the outcomes of any dedication of additional resources to veterans within civil and criminal court models. It identified the following outcomes as evidence of success:

- Prevention and reduction of homelessness among veterans;
- Reduction of recidivism;
- Recovery achieved through compliance with the individual treatment plan of the veteran;
Improved communication and reunification with family members, when appropriate;

- Successful elimination of legal barriers to self-sufficiency;

- Re-entry to the workforce, enhanced job opportunities, and reintegration with the community;

- Connection to VA benefits, long-term supportive housing, and other benefits for participants whose service-related disabilities are so severe as to prevent their return to the workforce; and

- Economic savings to the courts, criminal justice and public health systems, and the community.35

Additional Information

Veterans Treatment Courts

What is a Veterans Treatment Court?

American Bar Ass’n Policy on Veteran Treatment Courts: Principles for Veterans Treatment Courts (February 2010)

Homeless Veterans Courts and Homeless Courts

Homeless Court: San Diego Toolkit

Homeless Court: Taking the Court to Stand Down

Homeless Court: Taking the Court to the Streets

Access to Justice for Homeless Veterans

Returning Home . . . to Homelessness: San Diego’s Homeless Court Program Models Ways to Help

Homeless Courts

American Bar Association Policy: Decriminalization of Homelessness (February 2007)