

# **VETERAN ADVOCACY PROJECT**

## **STATE OF NEW YORK**

**SENATE STANDING COMMITTEE ON VETERANS, HOMELAND SECURITY  
& MILITARY AFFAIRS**

**ASSEMBLY STANDING COMMITTEE ON VETERANS' AFFAIRS  
ASSEMBLY SUBCOMMITTEE ON WOMEN VETERANS**

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## **The Impacts of COVID-19 on New York's Veterans**

**Testimony by:**

**Coco Culhane, Esq.**

**Executive Director**

**Veteran Advocacy Project**

**Friday, August 14, 2020, 10:30 a.m.**

Good morning Chair Brooks, Chair Barrett, and Chair Hunter. My name is Coco Culhane and I am the executive director of the Veteran Advocacy Project (or "VAP"); we provide free legal services to veterans and their families with a focus on those living with post traumatic stress and other mental health conditions. Our practice ranges from food stamps to DOD cases to death row. Thank you for the opportunity to speak here today.

There are far too many issues to effectively address in a short time today: the looming tsunami of evictions, the crippling cuts to government budgets, unemployment rates not seen for a century, inadequate access to health care, food, and shelter. The devastating effect of the COVID-19 pandemic on communities of color, the elderly, and individuals with mental health challenges has been relentless. VAP's clients encompass all of these demographics and the hardship they face has been compounded by a digital divide, leaving an already isolated population more alone than ever. Given VAP's specialization in working with veterans living with mental health conditions, I want to focus my remarks today on how so many of these veterans are being left behind and make recommendations regarding the challenges they are facing: isolation from information, disconnection from treatment, and lack of access to the resources of the VA.

As we all adapt to a virtual world, vast numbers of individuals are living in a kind of darkness, with no access to the internet. One of our attorneys has been making house calls because the e-signature software we purchased is useless to a veteran without a smartphone. In April, the FCC relaxed the documentation standards to prove eligibility for Lifeline, the discounted phone and internet access program. Where was that FCC announcement? Online. Under "training and outreach," the entity that administers the plans offers: webinars, instructional videos about how to apply for a phone, and newsletters via email.<sup>1</sup> Another way these veterans are isolated: as everyone turns to telehealth, what about all of the men and women who have no way to engage in digital medical services? For those who *do* have a smart phone or a laptop, figuring out a new technology can be frustrating enough to dissuade them from continuing in care.

These challenges, seemingly small annoyances to most of us, jeopardize the wellbeing of the vulnerable veterans taking their lives at twice the rate of the general population. Whether the number is 17 a day or 22 does not matter. What leads them to the point of suicide does. Most susceptible among this group are veterans who were involuntarily discharged based on misconduct; these men and women die by suicide at nearly three times the rate of other veterans.<sup>2</sup> Their less than honorable discharges have been found to be the second highest predictor of homelessness<sup>3</sup>; now add a pandemic where an estimated quarter of the population cannot, and has not, paid rent in six months and the potential outcome is overwhelming.<sup>4</sup>

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<sup>1</sup> Universal Service Administrative Co. "Lifeline: Learn," available at: <https://www.usac.org/lifeline/>; linking to: <https://www.usac.org/lifeline/learn/> (last accessed 8/14/2020).

<sup>2</sup> Bryan, CJ. *On Deployment and Military Suicide Risk*. JAMA PSYCHIATRY. 2015; 72(9):949–950. doi:10.1001/jamapsychiatry.2015.0671.

<sup>3</sup> See, Gundlapalli AV, Fargo JD, Metraux S, et. al. *Military Misconduct and Homelessness Among US Veterans Separated from Active Duty, 2001-2012*. JAMA. 2015;314(8):832–834. doi:10.1001/jama.2015.8207.

<sup>4</sup> Mankar, Noha, "25 percent of NYC renters have not made payments since March," NY POST, July 9, 2020, available at: <https://nypost.com/2020/07/09/25-percent-of-nyc-renters-have-not-made-payments-since-march/>.

Some veterans have been hit doubly hard: The systemic problems that make certain populations more vulnerable to COVID-19, are the same that lead to less than honorable discharges. One study showed that Black servicemembers were twice as likely to face disciplinary action and courts-martial than white servicemembers.<sup>5</sup> Mental health conditions cause disproportionately negative outcomes both in service and in the civilian world: A Government Accountability Office report showed that from 2011 to 2015, of the veterans discharged for misconduct, 62 percent *had already been diagnosed* with PTSD or a related condition.<sup>6</sup> Survivors of military sexual trauma are 50 percent more likely to receive misconduct discharges.<sup>7</sup> What all of this amounts to: injustice compounded by injustice. First, in service; then, post service when, cut off from VA health care and benefits, these veterans also face stigma trying to get a job, and spend every day struggling to get by. As part of low-income communities with higher mortality rates, more criminal justice involvement, and wildly unequal access to health care, the consequences of the pandemic hit them again.

Two nights ago, I checked in on one of our clients, a Marine who served in Vietnam; and when I asked how he had been doing, he paused and said, "There's a lot of pain." He was referring to the pandemic; he was referring to the fight for Black equality and safety and the Black Lives Matter demonstrations all around him; and he was referring to his service. He continued speaking, remembering the trauma: "as a Black man in the south, you gotta understand, back then, I couldn't report anything. A deep sigh. There are only two secrets I have carried my entire life: my discharge and my rape." He explained to me how he has spent years saying, "I don't need the VA" when buddies ask why he's not getting benefits. But when he contracted coronavirus in May, he felt the weight of those words. Unable to work and then without health care, he stayed home and prayed. He has lost 13 people to the virus. I gently asked if he was still in the PTSD program that we had connected him to and he said it was too hard to get the camera thing going and all that. When he didn't figure it out for an appointment, no one followed up...just like that, his mental health became a casualty. This is a man who has the technology available to him and yet is struggling. Meaning that even veterans with the technology to access to the VA's massive telehealth efforts may not be doing so.

The phone and computers simply cannot actually replace face to face interactions. VAP joined New York City's recently launched VetCheck, calling veteran residents to see if they need food or support, yet we know that most of our clients won't answer a number they don't recognize. Each staff member had to call from their line to get elderly clients to pick up. For most of those we have reached, telehealth is usually not an option because of technology deficits. A phone call is not enough.

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<sup>5</sup> Vanden Brook, Tom. "Black troops as much as twice as likely to be punished by commanders, courts" *USA Today* (June 7, 2017). Available at: <https://www.usatoday.com/story/news/politics/2017/06/07/black-troops-much-twice-likely-punished-commanders-courts/102555630/>.

<sup>6</sup> Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations, GAO-17-260: Published: May 16, 2017. Publicly Released: May 16, 2017.

<sup>7</sup> *Getting It Right: "Bad Paper" Legislation That Works*. Prepared for House Veteran Affairs Committee, Subcommittee on Health Legislative Hearing on H.R 918 and others March 29, 2017. Submitted by Swords to Plowshares, with the Assistance of Veterans Legal Clinic at Harvard Law School.

Finally, there are the clients we haven't heard from and have not been able to find. Right before New York City shut down, one of the students from my law school clinic had just finished conducting a narrative interview for a discharge upgrade case. The client is a woman who was first harassed in the Navy for her sexual orientation and then was raped in her barracks. She made the agonizing decision not to have the child when she found out she was pregnant from the assault. Some 40 years later she finally felt ready to confront the memories and, working with VAP, was connected to psychological care. She has no access to video health and used to use the library for internet service; her phone has gone straight to voicemail for months.

There are about 330 other veterans on our discharge upgrade docket and waitlist who are in similar positions. They cannot access the VA. They are living with mental illness and injury, they have very low income levels if any at all. They are slipping through the cracks. There needs to be a comprehensive effort to reach out to veterans across the state to offer varying methods of connecting to information, treatment, and services.

When it comes to services, no program can compete with what the VA can offer veterans: millions of federal dollars pouring into the state, comprehensive health care, telehealth to support individuals essentially trapped by the pandemic, housing subsidies, and more. These resources are completely inaccessible to vets with less-than-honorable discharges but they are out of reach for others, too. The claims backlog at the VA has already doubled this year,<sup>8</sup> after being at its lowest point in decades last fall; disability compensation rates are reportedly low in New York State compared to others<sup>9</sup>; and the Veterans Benefits Administration is already drowning in mail and incompetence.<sup>10</sup> If adjudication horror stories exist in the best of times, with each successive VA Secretary allegedly "fixing" these systems, imagine what six months of closed regional offices has done to veterans' due process rights.

For these reasons, we need to provide more resources for VA claims. Just as the state pays advocates to get individuals from public assistance to Supplemental Security Income, it can

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<sup>8</sup> Bennett, Abbie. "Veterans Affairs to resume disability exams at some hospitals as backlog nearly doubles," Radio.com, ConnectingVetsRadio (May 20, 2020). Available at: <https://connectingvets.radio.com/articles/veterans-affairs-to-resume-some-backlogged-disability-exams>.

<sup>9</sup> New York City Bar Association, Military and Veterans Affairs Committee, *Report on the Inadequate Financial Support for Legal Services for Veterans Seeking Benefits*, May 22, 2019. Available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-the-inadequate-financial-support-for-legal-services-for-veterans-seeking-benefits>.

<sup>10</sup> The Regional Offices have been closed for months so paperwork and mail are piling up and little communication is possible with any of these offices that are responsible for adjudicating claims. The due process rights violations of the Department of Veterans Affairs has been well-documented, particularly in the last ten years as the legal practice area has grown.

For a history of wait times and gross mishandling of claims, see *Veterans for Common Sense v. Shinseki*, 644 F.3d 845, 851 (9th Cir. 2011) ("We are presented here with the question of what happens when the political branches fail to act in a manner that is consistent with the Constitution.... Absent constitutionally sufficient procedural protections, the promise we make to veterans becomes worthless. When the government harms its veterans by the deprivations at issue here, they are entitled to turn to the courts for relief. Indeed, our Constitution established an independent Judiciary precisely for situations like this, in which a vulnerable group, that is being denied its rights by an unresponsive government, has nowhere else to turn.") The wait times on an appeal are nearly the same they were a decade ago.

fund more advocates for VA benefits of all kinds, but especially supporting advocates doing character of discharge and discharge upgrade applications. It will help address every single issue I have raised today. It will connect more veterans to health care, income, specialized mental health treatment, and community connection. Investing in removing barriers to veterans' resources will help every community a veteran lives in. It will bring federal dollars to our state; and it will support the most vulnerable populations of veterans who want to rebuild their lives in a time of unprecedented economic and medical peril.

Thank you for your time today.