

Mental Illness and Military Discharge Upgrades: American Veterans' Unseen Wounds

Samantha Mountford¹

INTRODUCTION

In 2017, there were approximately 20 million veterans in the United States,² representing over 6 percent of the population.³ In 2015, Post-9/11 Era veterans made up nearly 18 percent of the total veteran population.⁴ In 2014, the United States Department of Veterans Affairs anticipated that by 2043, post-9/11 veterans would comprise 32 percent of the veteran population.⁵ However, this shift in the veteran population is more than another addition to the civilian population. Instead, thousands of individuals will be entering a newly unfamiliar environment that could potentially lead to poverty, unemployment, homelessness, or even death.

This Note will focus on the multi-faceted and cyclical consequences of war, specifically as they affect veterans, with a particular emphasis on mental illness and military discharges. Mental illness can produce both silent and catastrophic consequences when left untreated, and recent research suggests that many servicemembers act out while still completing their military service and consequently receive less-than-honorable discharges.⁶ This Note will not attempt to defend all bad behavior committed by servicemembers, but instead will focus on the effects of mental illness and the potential for undeserved discharges as a result of misunderstood actions. A specific emphasis will be placed on the struggles Vietnam veterans have faced as a result of undiagnosed posttraumatic stress disorder (PTSD) and corresponding other-than-honorable discharges, as well as the potential parallel effect on today's veterans. An examination of the current issues facing Vietnam veterans, as well as the lack of urgency in addressing these problems and their resulting consequences, demands that measures be taken to prevent these tribulations from repeating themselves for the current influx of veterans of the Iraq and Afghanistan wars.

Section I of this Note will briefly discuss Vietnam and Global War on Terror (GWOT) veterans as well as military discharges and the discharge upgrade process. Section II will focus on mental illness, specifically PTSD and traumatic brain injury (TBI), and the effects of those disabilities specifically as encountered by both Vietnam and GWOT veterans. Section III provides an analysis of the effects that other-than-honorable discharges can have on veterans as well as a discussion of the recent legislation intended at correcting these issues. Finally, Section IV provides a conclusion.

¹ J.D., 2015, DePaul University College of Law; American University Washington College of Law, Visiting Student, 2014-2015; B.A., Justice, American University, December 2011. The author currently practices veterans' affairs law as Counsel at the Board of Veterans' Appeals at the United States Department of Veterans Affairs. This article was originally written in 2016.

² U.S. DEP'T OF VETERANS AFFAIRS, NAT'L CTR. FOR VETERANS ANALYSIS AND STATISTICS, *Veteran Population Projections 2017- 2037*, https://www.va.gov/vetdata/docs/demographics/new_vetpop_model/vetpop_infographic_final31.pdf.

³ On December 31, 2017, the estimated total United States population was 326,965,105. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <http://www.census.gov/popclock>.

⁴ DEMOCRATIC STAFF OF J. ECONOMIC COMM., 114TH CONG., 10 KEY FACTS ABOUT VETERANS OF THE POST-9/11 ERA 1 (2015), available at https://www.jec.senate.gov/public/_cache/files/db43918e-66f0-4096-8704-ffde681459cd/veterans-day-fact-sheet-2015-final.pdf.

⁵ *Id.* (citing U.S. DEP'T OF VETERANS AFFAIRS, Table 2L: VETPOP2014 Living Veterans by Period of Service, Gender, 2013-2043).

⁶ See *Missed Treatment: Soldiers with Mental Health Issues Dismissed for 'Misconduct'*, NAT'L PUB. RADIO (Oct. 28, 2015), <http://www.npr.org/2015/10/28/451146230/missed-treatment-soldiers-with-mental-health-issues-dismissed-for-misconduct> (focusing on servicemembers experiencing both psychiatric disorders and traumatic brain injury).

I. MILITARY BACKGROUND

Veteran assistance in the United States can be traced to 1636, when disabled soldiers were guaranteed support by the Pilgrim colonies.⁷ In 1776, the Continental Congress motivated soldiers to enlist via pensions provided to disabled soldiers.⁸ Following this, in the 19th century, individual states, and eventually the federal government, began to provide direct medical and hospital care to veterans.⁹ President Ronald Regan elevated what was then the Veterans Administration to a cabinet-level executive department in 1988, which was renamed the Department of Veterans Affairs (VA).¹⁰ The current VA is composed of the Veterans Benefits Administration, Veterans Health Administration, and National Cemetery Administration.¹¹

A. Veterans of Vietnam & the Global War on Terror

During the Vietnam War, 8.7 million individuals served in the United States military, with 3.4 million of these servicemembers deploying to Southeast Asia.¹² In total, in-theatre U.S. servicemember casualties of the Vietnam conflict reached over 58,000.¹³ VA estimates indicate that in September 2018, there were an estimated 6.5 million living Vietnam veterans.¹⁴

The Global War on Terror (GWOT) includes Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). In September 2015, there were over 4.7 million GWOT veterans.¹⁵ As of March 15, 2019, approximately 6,774 servicemembers had been killed in OEF and OIF, and over 52,000 servicemembers had been wounded in action in the two conflicts.¹⁶

B. The Discharge Process

All servicemembers are discharged from the military at the completion of their military contract term or for other reasons such as a “medical disability, punishment, [or] administrative reason.”¹⁷ The main document associated with discharge is the Certificate of Release or Discharge from Active Duty, generally referred to as the DD-214, which can be produced in both a short or long form. Although both

⁷ U.S. DEP’T OF VETERANS AFFAIRS, *About VA: History*, http://www.va.gov/about_va/vahistory.asp.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* After the VA became a cabinet-level department, President George H. W. Bush acknowledged the department’s elevation, saying, “There is only one place for the Veterans of America, in the Cabinet Room, at the table with the President of the United States of America.” *Id.*

¹¹ *Id.*

¹² U.S. DEP’T OF VETERANS AFFAIRS OFFICE OF PUB. AFFAIRS, AMERICA’S WARS (May 2017), http://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf.

¹³ NAT’L ARCHIVES, VIETNAM WAR U.S. MILITARY FATAL CASUALTY STATISTICS, <https://www.archives.gov/research/military/vietnam-war/casualty-statistics> (last reviewed Jan. 11, 2018).

¹⁴ U.S. DEP’T OF VETERANS AFFAIRS, NAT’L CTR. FOR VETERANS ANALYSIS AND STATISTICS, *Table 2L: Living Veterans by Period of Service, Gender, 2015 - 2045*, http://www.va.gov/vetdata/docs/Demographics/New_Vetpop_Model/2L_Vetpop2016_POS_National.xlsx.

¹⁵ U.S. DEP’T OF VETERANS AFFAIRS, *Veterans by Period of Service*,

https://www.va.gov/vetdata/docs/Quickfacts/Veterans_by_POS_and_by_Children.pdf. For consistency’s sake, this Note will refer to veterans of both Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) (Post-9/11 veterans) as Global War on Terror (GWOT) veterans.

¹⁶ U.S. DEPT. OF DEF., CASUALTY STATUS, <https://dod.defense.gov/News/Casualty-Status/> (last updated March 15, 2017). This number includes both hostile and non-hostile deaths. *Id.*

¹⁷ CONN. VETERANS LEGAL CTR., VETERANS DISCHARGE UPGRADE MANUAL 6 (2011), <http://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-2011.pdf> [hereinafter VETERANS DISCHARGE UPGRADE MANUAL].

forms contain a veteran's general information, the long form also includes the characterization of service, reason for discharge, and a re-enlistment code.¹⁸ VA, along with most employers, requests the long form when a DD-214 is required.¹⁹ Thereby, release of this document can incidentally reveal sensitive information to third parties, prompting many veterans to apply for discharge upgrades to change the information found on their DD-214s.²⁰

Veterans who leave the military before the end of their term of service receive either an administrative or punitive discharge.²¹ Administrative discharges are given for less serious actions.²² The three administrative discharges, in descending order, include: Honorable Discharge, General Discharge (Under Honorable Conditions), and Discharge under Other than Honorable Conditions.²³ Punitive discharges are given by a court-martial as a sentence or punishment for more serious offenses. In order of severity, the punitive discharges are: Bad Conduct Discharge, Dishonorable Discharge, and Dismissal (only for officers).²⁴ In addition to the above discharges, veterans may also be discharged for physical and psychiatric disabilities, which are neither administrative nor punitive.²⁵ However, diagnoses that result in medical discharges, including mental illnesses, are often listed on a veteran's DD-214 and can be "incorrect, contested, or unjustly stigmatizing for the veteran."²⁶

There are two main administrative paths Veterans must navigate to obtain a discharge upgrade: the Discharge Review Board (DRB) and the Board for Correction of Military Records (BCMR).²⁷ Discharge Review Boards have the authority to upgrade the character of a discharge and change the reason for discharge on a veteran's DD-214.²⁸ However, DRBs cannot accept applications from veterans who were dishonorably discharged or dismissed by general court-martial and have "strict fifteen-year statutes of limitation."²⁹ If this statute of limitations has passed, veterans must apply for a discharge upgrade through the BCMR.³⁰ The BCMR boards have a three-year time limit, although this can be waived, and they have the authority to make changes that DRBs cannot make.³¹

The standard of review for DRBs is codified in both the Code of Federal Regulations and the U.S. Code,³² and discharge upgrades are given only on the grounds of equity or propriety.³³ Reasons of equity include changes in policies and procedures, inconsistencies in disciplinary standards, and evidence relating to quality of service and capability to serve.³⁴ Reasons of propriety include errors of fact, law, procedure, or discretion, and changes in policies that are retroactive.³⁵ Furthermore, DRBs

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.*

²⁷ *Id.* at 10. ("Each service department has its own DRB and BCMR . . . though each service department's standards and practices may differ slightly.")

²⁸ *Id.* at 11.

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.* This Note will focus on administrative discharge upgrades and not discharges as a result of a court-martial.

³² See 10 U.S.C. § 1553 (2012) and 32 C.F.R. 70.9 § (2019).

³³ See 32 C.F.R. § 70.9.

³⁴ *Id.* § 70.9(c)(1)-(3).

³⁵ *Id.* § 70.9(b); see also VETERANS DISCHARGE UPGRADE MANUAL, *supra* note 17, at 12.

must operate with “a presumption of regularity in the conduct of governmental affairs,”³⁶ meaning that the DRB must presume “that government officials act[ed] properly in carrying out their duties, that military records are correct, and that [all] statutes and regulations are constitutional.”³⁷ This presumption can lead to veterans experiencing difficulties in verifying their cases for a discharge upgrade if the veteran does not have any records of wrongdoing by the government.

Veterans seeking an upgrade through a DRB can choose to apply for a records review, a personal hearing in Washington, DC, or a hearing before a traveling board.³⁸ However, veterans who choose to have personal hearings are generally more likely receive their desired upgrades,³⁹ placing additional pressure on impoverished veterans to financially afford such a crucial, and usually essential, change. Veterans are advised to bring to their hearings any and all documents that support their issues or claims, as well as letters of reference and witnesses.⁴⁰ However, for many veterans this information may be unobtainable, as it may not exist or include the needed information. Moreover, the burden of proof rests on the veteran to show “substantial credible evidence” that the discharge was either inequitable or improper,⁴¹ placing a significant amount of pressure on a veteran who may not understand the process or be able to afford an attorney.

In addition to the bureaucracy of these formalities, the process itself is lengthy. The Army DRB warns veterans that a decision can take up to twelve months.⁴² For many veterans seeking these upgrades, a year is potentially too long to wait, as they are often pursuing these discharge upgrades in order to qualify for VA benefits or remove stigmatizing or incorrect medical information from documents provided to potential employers. Therefore, these veterans struggle with a year-long wait to find employment, access health care, or secure housing, which can result in dire consequences such as homelessness and suicide.

II. MENTAL ILLNESS

The costs of war expand much farther than many may believe, as returning servicemembers can face severe and devastating mental illnesses as a result of their service to this country. Although now more commonly known and associated with GWOT veterans, mental health issues, specifically PTSD and TBI, have existed silently alongside every war.⁴³

A. PTSD

War-related mental health problems have been with us for centuries. They probably afflicted Achilles, the Greek warrior at the center of Homer’s Iliad. During the Civil War, such problems were called “nostalgia” or “soldier’s heart.” In World War I, the term was “shell shock.” “Combat neurosis” and “battle fatigue” were the preferred

³⁶ 32 C.F.R. § 70.8(b)(12)(vi).

³⁷ VETERANS DISCHARGE UPGRADE MANUAL, *supra* note 17, at 14.

³⁸ *Id.* (explaining that hearings before a traveling board are available only to Army and Air Force veterans).

³⁹ *Id.* at 14-15.

⁴⁰ U.S. ARMY, REVIEW BOARDS AGENCY, ARMY DISCHARGE REVIEW BOARD—FREQUENTLY ASKED QUESTIONS, <http://arba.army.pentagon.mil/adrb-faq.html> (last visited February 10, 2018) [hereinafter ARMY DISCHARGE REVIEW BOARD FAQ].

⁴¹ 32 C.F.R. § 70.8(b)(12)(vi).

⁴² ARMY DISCHARGE REVIEW BOARD FAQ, *supra* note 40.

⁴³ Patrick J. Skerrett, *On Veterans Day, Don't Let the "Invisible Wounds" of PTSD Remain Hidden*, HARVARD HEALTH BLOG (Nov. 11, 2013), <http://www.health.harvard.edu/blog/on-veterans-day-dont-let-the-invisible-wounds-of-ptsd-remain-hidden-201311116858>.

descriptions during World War II and the Korean War. By the late 1970s, the condition had evolved into post-traumatic stress disorder (PTSD).⁴⁴

It was not until 1980 that the American Psychiatric Association (APA) added PTSD to its Diagnostic and Statistical Manual of Mental Disorders (DSM-III) classification scheme.⁴⁵ The medical diagnosis of PTSD introduced the concept of external trauma, in contrast to an individual flaw, as the disorder's causation.⁴⁶ The APA, in the DSM-III, initially theorized that a traumatic event is considered to be a "catastrophic stressor" that was atypical of the usual human experience such as war, torture, rape, the Holocaust, and natural or human-made disasters.⁴⁷ In defining this diagnosis, the APA drew a clear distinction between such catastrophic stressors and more common stressful situations that are typical of human experience, such as divorce, financial problems, or serious illness.⁴⁸

Diagnostic criteria for PTSD were most recently revised in the fifth edition of the DSM, published in 2013.⁴⁹ These revisions recognize that PTSD is not a fear-based anxiety disorder⁵⁰ and expanded the diagnosis to include anhedonic and dysphoric presentations.⁵¹ Furthermore, PTSD is no longer classified as an anxiety disorder and is now included in a new category, Trauma- and Stressor-Related Disorders, in which every disorder's onset is preceded by exposure to a traumatic event.⁵²

The DSM-5 created eight new and distinct criteria for PTSD diagnoses, including the presence of a stressor and the occurrence of intrusive recollections, avoidance, negative cognitions and mood, and alterations in arousal.⁵³ These criteria must have persisted for at least one month, cause functional distress, and not be attributable to other causes in order to warrant a PTSD diagnosis under the new criteria.⁵⁴

B. Traumatic Brain Injury

Traumatic brain injury (TBI) is a physical injury resulting from an "external mechanical force [that] causes brain dysfunction."⁵⁵ A "violent blow or jolt to the head or body," as well as objects penetrating the skull, can cause a TBI.⁵⁶ The effects of TBI range from temporary brain dysfunction to physical damage of the brain that can cause long-term complications or even death.⁵⁷ The primary concerns regarding TBI are maintaining oxygen levels to the brain and body, maintaining adequate blood flow, and controlling blood pressure.⁵⁸

⁴⁴ *Id.*

⁴⁵ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3d ed. 1980); *see also* Matthew J. Friedman, U.S. DEP'T OF VETERANS AFFAIRS, NAT'L CTR FOR PTSD, *PTSD History and Overview* [hereinafter Friedman], <http://www.ptsd.va.gov/professional/PTSD-overview/ptsd-overview.asp> (last visited Feb. 10, 2018).

⁴⁶ Friedman, *supra* note 45.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) [hereinafter DSM-5].

⁵⁰ Friedman, *supra* note 45. Both the DSM-III and DSM-IV classified PTSD as fear-based anxiety disorder. *Id.*

⁵¹ Anhedonic and dysphoric presentations are "marked by negative cognitions and mood states as well as disruptive (e.g. angry, impulsive, reckless and self-destructive) behavioral symptoms." *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ MAYO CLINIC, *Diseases and Conditions: Traumatic Brain Injury - Definition*, <http://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/basics/definition/con-20029302> (last visited February 10, 2018).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ NAT'L INST. OF HEALTH, NAT'L INST. OF NEUROLOGICAL DISORDERS AND STROKE, *Traumatic Brain Injury Information Page*,

Disabilities due to TBI range with severity, and approximately half of individuals with severe TBIs require surgery to remove or repair hematomas or contusions.⁵⁹ Disabilities also vary by the location and severity of the injury and the age and health of the injured individual.⁶⁰ Common results of TBI include effects on:

cognition (thinking, memory, and reasoning), sensory processing (sight, hearing, touch, taste, and smell), communication (expression and understanding), and behavior or mental health (depression, anxiety, personality changes, aggression, acting out, and social inappropriateness).⁶¹

Other injuries can result in, and range from, unresponsiveness to vegetative states.⁶²

In addition to PTSD, TBI has been of recent interest in regard to veterans, specifically GWOT veterans, as a result of the frequent encounters with improvised explosive devices in these wars.⁶³ However, as compared to PTSD, there is limited research on the long-term effects of TBI due to blast injury.⁶⁴

C. Recent Legal Action

On March 3, 2014, five Vietnam veterans filed a lawsuit in U.S. District Court seeking class action status for tens of thousands of Vietnam veterans who developed PTSD during their service and consequently received less-than-honorable discharges because of PTSD-related behavior.⁶⁵ The lawsuit challenged the action of the Department of Defense (DoD) in refusing to recognize that PTSD was in fact the injury leading to the plaintiffs' other-than-honorable or bad conduct discharges, which are commonly referred to as "bad paper."⁶⁶ According to the lawsuit, approximately 260,000 Vietnam-era veterans received less-than-honorable discharges, with more than 80,000 of those veterans potentially having PTSD.⁶⁷ According to attorneys involved in the case, the lawsuit alleged that the "decades-long failure" of the DoD to fairly consider applications for discharge upgrades is "discrimination against a group of veterans who not only have PTSD but are also elderly and often indigent."⁶⁸

<https://www.ninds.nih.gov/Disorders/All-Disorders/Traumatic-Brain-Injury-Information-Page>. (last updated June 20, 2017).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Ann C. McKee & Meghan E. Robinson, *Military-Related Traumatic Brain Injury and Neurodegeneration*, 10 ALZHEIMER'S & DEMENTIA S242 (2014).

⁶⁴ RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCE, AND SERVICES TO ASSIST RECOVERY* 11-13 (Terri Tanielian & Lisa H. Jaycox, eds., 2008). For more information regarding TBI research, see NAT'L INST. OF HEALTH, NAT'L INST. OF NEUROLOGICAL DISORDERS AND STROKE, *Clinical Research – Focus on Traumatic Brain Injury Research*, <https://www.ninds.nih.gov/current-research/focus-disorders/focus-traumatic-brain-injury-research> (last updated Jan. 25, 2018).

⁶⁵ Scott Malone, *Vietnam Veterans Sue U.S. Military for Discharge Upgrades over PTSD*, REUTERS, Mar. 3, 2014,

<http://www.reuters.com/article/us-usa-veterans-ptsd-idUSBREA2225S20140303>. The plaintiffs were all seventeen to twenty years old at the time they enlisted and are currently all in their sixties. *Id.*

⁶⁶ SUNDIATA SIDIBE & FRANCISCO UNGER, *UNFINISHED BUSINESS: CORRECTING "BAD PAPER" FOR VETERANS WITH PTSD 1*, <https://law.yale.edu/sites/default/files/documents/pdf/unfinishedbusiness.pdf>.

⁶⁷ Complaint at 22-24, *Monk v. Mabus*, No. 3:14-cv-00260 (D. Conn. Mar. 3, 2014) [hereinafter Complaint]; see Dan Lamothe, *Long Road Still Ahead for Vietnam Veterans Seeking PTSD-Related Discharge Upgrades*, WASH. POST: CHECKPOINT, Sep. 4, 2014, <https://www.washingtonpost.com/news/checkpoint/wp/2014/09/04/long-road-still-ahead-for-vietnam-veterans-seeking-ptsd-related-discharge-upgrades/>.

⁶⁸ Press Release, YLS Clinic Files Nationwide Class Action Lawsuit on Behalf of Vietnam Veterans with PTSD, Yale Law School (Mar. 3, 2014) [hereinafter YLS Clinic], <https://law.yale.edu/yls-today/news/yls-clinic-files-nationwide-class-action-lawsuit-behalf-vietnam-veterans-ptsd>.

The lawsuit stated that DoD “gave these servicemembers other than honorable discharges based on poor conduct These behaviors, however, are typical of those who have recently experienced trauma and were symptoms of the veterans’ underlying, undiagnosed PTSD.”⁶⁹ The consequences of undiagnosed PTSD translate across almost every aspect of a veteran’s life and can ultimately lead to poverty and other devastation, as stated by Conley Monk, one of the five plaintiffs in the lawsuit:

When I was in high school, I worked at the VA hospital in the kitchen as a dishwasher. But after I came home from Vietnam, I couldn’t even get my job back as a dishwasher because of my bad paper My discharge status has been a lifetime scar. If I were discharged today, my PTSD would be recognized and treated—and I wouldn’t be punished for having a service-connected medical condition.⁷⁰

Senator Richard Blumenthal met with four of the plaintiffs shortly after the suit was filed and expressed his distaste with both the delayed PTSD diagnoses and DoD’s lack of cooperation.⁷¹ Blumenthal, a former Marine Corps Reservist, recognized the double injury that Vietnam veterans have faced: undiagnosed PTSD resulting in bad paper, which in turn resulted in “unjustly denied support, services and benefits.”⁷²

DoD responded to the lawsuit by issuing guidance to military officials in charge of ruling on discharge upgrade petitions.⁷³ Defense Secretary Chuck Hagel, who himself is an Army infantryman wounded by a mine in a Vietnamese jungle,⁷⁴ stated: “This is our responsibility and the right thing to do for veterans. . . . This new guidance reflects our commitment to those who served our country during times of war many decades ago.”⁷⁵ Following the lawsuit’s filing, DoD also released documents that detailed the review process of the impending influx of discharge upgrade applications.⁷⁶ Secretary of Defense Hagel discussed the care that will accompany the consideration of every PTSD petition, but emphasized the potential difficulties due to a lack of “substantive information concerning medical conditions in either Service treatment records or personnel records.”⁷⁷

A supplemental guide to the BCMR was also released, detailing specific medical guidance, consideration of mitigating factors, and procedures to direct the review process.⁷⁸ This guide advised “liberal consideration” for petitions that included service treatment records that documented one or more symptoms of PTSD.⁷⁹ The guide further provided that, in “cases in which PTSD or PTSD-related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.”⁸⁰

⁶⁹ Complaint, *supra* note 67, at 24.

⁷⁰ YLS Clinic, *supra* note 68.

⁷¹ *Id.*

⁷² *Id.* Restricted access to VA benefits is further discussed in Section III.A.i.

⁷³ Lamothe, *supra* note 67.

⁷⁴ See Myra MacPherson, *The Private War of Chuck and Tom Hagel*, SALON (Apr. 30, 2007), http://www.salon.com/2007/04/30/hagel_brothers/.

⁷⁵ Lamothe, *supra* note 67.

⁷⁶ *Id.*

⁷⁷ Memorandum from Secretary of Defense Charles T. Hagel to Secretaries of the Military Departments, OSD009883-14 (Sept. 3, 2014), <http://arba.army.pentagon.mil/documents/SECDEF%20Guidance%20to%20BCMRs%20re%20Vets%20Claiming%20PTSD.pdf>.

⁷⁸ *Id.* (attachment to memorandum).

⁷⁹ *Id.*

⁸⁰ *Id.*

However, the guide also stated that the review boards should “exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a characterization of service of under other than honorable conditions.”⁸¹ Additionally, this guidance is limited to the BCMR and is not applicable to DRBs.⁸² Therefore, while this guidance is helpful for veterans who have filed petitions with the BCMR, many other veterans may still encounter bureaucratic obstacles, such as the DRB process itself, or they may be outside of the BCMR’s three-year statute of limitations.⁸³

III. EFFECTS OF LESS-THAN-HONORABLE DISCHARGES

This Part addresses veterans who have received less-than-honorable discharges, for both mental illness and other reasons, and the subsequent struggles that ensue. As discussed above, PTSD has varying effects on veterans’ post-military lives. This section focuses on how mental illness in the military can lead to negative discharges, which in turn can lead to poverty-related issues such as denial of benefits, unemployment, and homelessness. While there are countless programs specifically assisting veterans in each of the areas discussed below, a more in-depth focus on the psychological consequences of military service could potentially prevent the need for such programs. Although not all veterans who have received bad paper go on to experience poverty, as further discussed below, limited access to VA benefits and unemployment due to less-than-honorable discharges often contribute to homelessness and can potentially lead to suicide.

A. Bad Paper—Military Discharges

As discussed earlier, veterans’ discharges under other than honorable conditions, commonly referred to as “bad paper,” can cause severe consequences regarding day-to-day living, such as difficulty obtaining health care, employment, and housing. Many VA programs and benefits are only available to veterans who have received certain discharge characteristics, thereby excluding veterans based on actions committed many years ago.⁸⁴

Between 2006 and 2012, the Army discharged 76,165 soldiers with bad paper,⁸⁵ with only one in seven being discharged following a criminal conviction for a serious offense.⁸⁶ The remaining soldiers were discharged for more minor breaches of military discipline, such as missing duty or substance abuse.⁸⁷ It is of recent concern that servicemembers with mental health issues are being separated from the military in lieu of addressing the underlying issues.⁸⁸ The executive director of National Veterans Legal Services Program opined that servicemembers with mental health issues are being discharged without the normal medical evaluation board procedure because “they want them replaced with another

⁸¹ *Id.*

⁸² 10 U.S.C. § 1553 (2012); *see generally* Part I, *supra*.

⁸³ VETERANS DISCHARGE UPGRADE MANUAL, *supra* note 17, at 10.

⁸⁴ *See* 38 U.S.C. § 101(2) (2012); 38 C.F.R. § 3.12 (2019); *see also* U. S. DEP’T OF VETERANS AFFAIRS, *Applying for Benefits and Your Character of Discharge*, https://www.benefits.va.gov/benefits/character_of_discharge.asp [hereinafter *Applying for Benefits*] (last visited Feb. 10, 2018).

⁸⁵ Phillip Carter, *The Vets We Reject and Ignore*, N.Y. TIMES (Nov. 10, 2013), <http://www.nytimes.com/2013/11/11/opinion/the-vets-we-reject-and-ignore.html>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Heath Druzin, *Report: VA Unfairly Denied Services to 125K Post-9/11 Veterans*, Stars and Stripes (Mar. 30, 2016), <https://www.stripes.com/news/report-va-unfairly-denied-services-to-125k-post-9-11-veterans-1.401842#.WQEs6RiZOLI>.

soldier who can perform.”⁸⁹ Iraq War Veteran Phillip Carter succinctly described the attitudes towards mental illness and bad paper:

Instead of showing compassion for these troops who were carrying the invisible wounds of war, their commanders kicked them out. These troops’ getting pushed out under such circumstances would be enough of a blow, but these commanders compounded the injury by giving them bad paper, instead of merely administratively separating them from the service. . . .

We have a moral obligation to those who serve, especially those who serve us in combat. At times, the military must discharge those who can’t perform or conform. However, commanders should exercise far greater discretion and compassion in trimming the ranks. Bad discharges indelibly mark veterans as damaged goods and cost society a great deal too.⁹⁰

The current conflicts in Iraq and Afghanistan are the longest period of war in American history and have resulted in more soldiers being discharged for misconduct than at any other time.⁹¹ Information gathered by reporters via the Freedom of Information Act shows that between 2009 and 2013, the annual number of misconduct discharges increased 25 percent in the Army, correlating with an increase in wounded soldiers.⁹² Additionally, this information revealed that of the eight Army posts with the most combat units, misconduct discharges increased 67 percent during the same period.⁹³ While advocating for changes to laws governing discharge processing in 2016, the CEO and president of Vietnam Veterans of America stated that it was “disturbing to see this issue come back” as “[w]e saw half a million questionable less-than-honorable discharges during the Vietnam era. And to think that today there are as many as 300,000 more since September 11, that’s a disgrace.”⁹⁴

1. VA Benefits

There are numerous benefits that veterans can enjoy through the VA. However, not all veterans are eligible for VA benefits as a direct result of the characterization of their discharges. A bad conduct or dishonorable discharge generally makes a veteran ineligible for all VA benefits.⁹⁵ Veterans with other than honorable discharges can usually receive VA medical care for service-connected disabilities,⁹⁶ but they must also receive a favorable character of discharge determination from VA to receive any other benefits.⁹⁷ Additionally, education benefits, such as the Post 9/11 GI Bill, require an honorable discharge.⁹⁸ Therefore, veterans with other than honorable discharges likely must often take on student

⁸⁹ *Id.*

⁹⁰ Carter, *supra* note 85.

⁹¹ Dave Philipps, *Disposable: Surge in Discharges Includes Wounded Soldiers*, THE GAZETTE (May 19, 2013), <http://cdn.csgazette.biz/soldiers/day1.html>.

⁹² *Id.*

⁹³ *Id.* However, while the Army tracks how many misconduct discharges are given, it does not track how many are received by wounded soldiers. *Id.*

⁹⁴ Leo Shane III, *Advocates, Lawmakers Push for Answers to Problem of ‘Bad Paper’ Discharges*, MILITARY TIMES (Sept. 13, 2016), <http://www.militarytimes.com/articles/bad-paper-discharges-rally>.

⁹⁵ U.S. DEP’T OF VETERANS AFFAIRS, *Claims for VA Benefits and Character of Discharge* (Mar. 2014), https://www.benefits.va.gov/benefits/docs/COD_Factsheet.pdf.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ U.S. DEP’T OF VETERANS AFFAIRS, *Education and Training: Post 9/11 GI Bill*, https://www.benefits.va.gov/gibill/post911_gibill.asp. (last visited Feb. 10, 2018). Veterans who were discharged with a service-connected disability after 30 days of service are also eligible. *Id.*

debt in order to obtain higher education. Discharge upgrades are thus of concern to veterans who wish to qualify for VA benefits—specifically health care, disability compensation, and education benefits.

However, it is estimated that approximately 125,000 GWOT veterans with other than honorable discharges are being wrongfully denied VA services, including healthcare and housing assistance.⁹⁹ A joint study from Harvard Law School’s Veterans Legal Clinic and two veterans advocacy groups, National Veterans Legal Services Program and Swords to Plowshares, discusses the confusion regarding the abilities of veterans with bad paper to access VA services.¹⁰⁰ According to the study, Congress originally intended that only veterans whose conduct would have led to a dishonorable discharge in a court-martial should be prohibited from utilizing VA services.¹⁰¹ However, VA’s internal rules are in contradiction, leading to a large number of GWOT veterans with other than honorable, but not necessarily dishonorable, discharges being denied VA services as well.¹⁰² In response, VA has stated that a thorough review of the internal rules would be conducted in order to “better advocate for and serve veterans within the law and regulation.”¹⁰³

Additionally, in order to compensate veterans for disabilities related to their service, VA pays disability compensation to veterans who are disabled as a result of injury or disease that was either incurred in or aggravated during active duty.¹⁰⁴ Both physical and mental disabilities qualify veterans for disability compensation,¹⁰⁵ as well as disabilities that were caused or aggravated by service-connected disabilities.¹⁰⁶ Therefore, disabilities arising years after a veteran’s service are still eligible for compensation. Compensation amounts are adjusted each year, and veterans can receive additional compensation for spouses, children, and other dependents.¹⁰⁷

Public policy professor Linda Bilmes has warned of future increases in VA disability compensation costs due to claims filed by GWOT veterans.¹⁰⁸ In 2014, approximately 22.8 percent of GWOT veterans received VA compensation, as compared to only 18.1 percent of all other veterans.¹⁰⁹ Additionally, in 2013, more than 270,000 GWOT veterans had been treated by the VA health system for potential PTSD diagnoses, with 150,000 of these veterans receiving compensation benefits for PTSD.¹¹⁰

⁹⁹ Druzin, *supra* note 88.

¹⁰⁰ VETERANS LEGAL CLINIC, LEGAL SERVICES CTR. OF HARVARD LAW SCH., UNDERSERVED: HOW THE VA WRONGFULLY EXCLUDES VETERANS WITH BAD PAPER (2016), <https://www.swords-to-plowshares.org/wp-content/uploads/Underserved.pdf>.

¹⁰¹ *Id.* at 2.

¹⁰² *Id.* at 8-9.

¹⁰³ Druzin, *supra* note 88 (quoting former VA Deputy Secretary Sloan Gibson praising the report).

¹⁰⁴ 38 U.S.C. §§ 1110, 1131 (2012); *see* 38 C.F.R. § 3.102 (2019). Disabilities resulting from diseases and injuries incurred during active duty for training, and injuries incurred during inactive duty training, are also eligible for service connection. *See* 38 U.S.C. § 101; 38 C.F.R. § 3.6.

¹⁰⁵ 38 C.F.R. §§ 3.303, 3.304.

¹⁰⁶ *Id.* § 3.310.

¹⁰⁷ The Veterans Compensation Benefits Rate Table provides the exact dollar amounts of each disability rating. *See* U.S. DEP’T OF VETERANS AFFAIRS, *Veterans Compensation Benefits Rate Tables - Effective 12/1/19*, https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp.

¹⁰⁸ Linda J. Bilmes, *The Financial Legacy of Iraq and Afghanistan: How Wartime Spending Decisions Will Constrain Future National Security Budgets* 1-2 (Harvard Kennedy Sch., Faculty Research Working Paper Series No. RWP13-006, 2013), <https://research.hks.harvard.edu/publications/getFile.aspx?Id=923>.

¹⁰⁹ U.S. DEP’T OF VETERANS AFFAIRS, *Profile of Post-9/11 Veterans: 2014* 13 (May 2016), https://www.va.gov/vetdata/docs/SpecialReports/Post_911_Veterans_Profile_2014.pdf.

¹¹⁰ Chris Adams, *Millions Went to War in Iraq, Afghanistan, Leaving Many with Lifelong Scars*, MCCLATCHYDC (Mar. 14, 2013), <http://www.mcclatchydc.com/news/nation-world/national/article24746680.html>.

As new positive attitudes towards mental health treatment may have led to increases in Vietnam veterans' claims, the stigma that accompanies PTSD, in addition to the "man up" military environment, discourages many veterans from seeking help. Peer perception fuels resistance by servicemembers to acknowledge mental health issues, as veterans who tested positive for mental disorders were twice as likely to express concern regarding the associated stigma.¹¹¹

Furthermore, approximately 37,000 GWOT servicemembers have deployed at least five times, and 400,000 have deployed three or more times.¹¹² This "unprecedented demand on a small population" has, and will continue to have, potential long-term health and poverty consequences, as the cost of providing disability benefits, medical care, and related services may eventually exceed \$1 trillion.¹¹³ Additionally, as more servicemembers have been deployed multiple times, the impacts of multiple deployments, specifically TBIs, "will be felt for years."¹¹⁴

Additionally, GWOT veterans currently face "a higher degree of mental stress despite the decrease in physical injuries and casualties" as a result of the "unconventional nature" of these wars.¹¹⁵ A 2012 Congressional Budget Office report found that from 2004 to 2009, of nearly 500,000 post-9/11 servicemembers seen by VA health care services, 21 percent had PTSD, 2 percent had TBI, and 5 percent had both.¹¹⁶

Furthermore, *The New England Journal of Medicine* conducted a study analyzing the mental health of specific Army and Marine Corps units in order to inform policy and better identify mental health diagnoses for similarly situated returning veterans.¹¹⁷ The study revealed that, of soldiers and Marines who were involved in ground-combat operations in Iraq, more than 90 percent reported being shot at and seeing dead bodies or human remains.¹¹⁸ Furthermore, in Iraq, over 85 percent of soldiers and Marines reported having been attacked or ambushed; receiving incoming artillery, rocket, or mortar fire; or knowing someone who was seriously injured or killed.¹¹⁹ These statistics demonstrate not only the intensity of the combat zones where GWOT veterans have served, but also the intensity of the trauma that GWOT veterans endure and the need for accessible VA medical care.

2. Unemployment

In addition to battling both disability compensation claims and the discharge upgrade process, veterans can also face severe stigma as a result of their less-than-honorable discharges when seeking employment.

¹¹¹ Nema Milaninia, *The Crisis at Home Following the Crisis Abroad: Health Care Deficiencies for U.S. Veterans of the Iraq and Afghanistan Wars*, 11 DEPAUL J. HEALTH CARE L. 327, 330 (2008).

¹¹² Adams, *supra* note 110. 10,000 of the 37,000 were members of National Guard or Reserve units. *Id.*

¹¹³ *Id.* Senator Bernie Sanders stated: "Many Americans don't understand the full cost of war . . . but we have a moral obligation to take care of every veteran who has been injured in war. And when we do that, that is going to be a very, very expensive proposition." *Id.*

¹¹⁴ *Id.*

¹¹⁵ Milaninia, *supra* note 111, at 328.

¹¹⁶ CONG. BUDGET OFFICE, THE VETERANS HEALTH ADMINISTRATION'S TREATMENT OF PTSD AND TRAUMATIC BRAIN INJURY AMONG RECENT COMBAT VETERANS (2012), <https://www.cbo.gov/sites/default/files/cbofiles/attachments/02-09-PTSD.pdf>.

¹¹⁷ Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 N. ENGL. J. MED. 13 (2004).

¹¹⁸ *Id.* at 16-18.

¹¹⁹ *Id.* at 18.

Since about 90% of all discharges issued are Honorable, a discharge of that type is commonly regarded as indicating acceptable, rather than exemplary service. *In consequence, anything less than an Honorable Discharge is viewed as derogatory, and inevitably stigmatizes the recipient.*¹²⁰

This “unmistakable social stigma”¹²¹ follows veterans through job applications and interviews and “greatly limits the opportunities for both public and private civilian employment.”¹²²

In addition to the negative reputation resulting from a specific discharge, veterans can also face negative consequences based on medical conditions that appear on their DD-214s. Veterans discharged for mental illness or who developed mental illness as a result of their service often worry about potential employers seeing this information on documentation required during the application process, mainly the long form of their DD-214. Thus, regardless of the situation underlying the discharge, employers may become biased from this information alone and choose not to hire, or to fire, a veteran with bad paper. Therefore, the negative cyclical effects of mental illness as it relates to employment can easily be seen—those that may desperately need employment are shunned and remain unemployed.

3. Homelessness

The National Coalition for Homeless Veterans estimates that approximately 1.4 million veterans are at risk for becoming homeless as a result of factors such as poverty and lack of support networks.¹²³ Additionally, mental illness and substance abuse greatly contribute to veteran homelessness.¹²⁴

In January 2018, there were 37,878 veterans experiencing homelessness,¹²⁵ although from 2009 to 2018, veteran homelessness declined by 48 percent (35,489 veterans) overall.¹²⁶ From 2015 to 2016 alone, veteran homelessness declined 17 percent (8,254 veterans).¹²⁷ This rapid decline in veteran homelessness can be attributed to numerous homelessness initiatives occurring throughout the country.¹²⁸ A driving factor in this reduction of veteran homelessness is VA’s December 2017 revision of its regulations governing how it defines homeless veterans.¹²⁹ This change broadens the definition of “veteran” to allow veterans who were discharged under other-than-honorable conditions to take advantage of benefits for homeless veterans.¹³⁰

¹²⁰ MICHAEL ETTlinger & DAVID ADDLESTONE, *MILITARY DISCHARGE UPGRADING AND INTRODUCTION TO VETERANS ADMINISTRATION LAW* (1990) (quoting *Bland v. Connally*, 293 F.2d 852, 853 n.1 (D.C. Cir. 1961)), https://ctveteranslegal.org/wp-content/uploads/2012/12/MilitaryDischargeUpgrading_lr.pdf (emphasis added).

¹²¹ *Bland*, 293 F.2d at 858.

¹²² *Id.*

¹²³ NAT’L COALITION FOR HOMELESS VETERANS, *Background and Statistics: FAQ About Homeless Veterans*, <http://nchv.org/media/background-statistics/> (last visited Feb. 20, 2018).

¹²⁴ U.S. DEP’T OF VETERANS AFFAIRS, *Homeless Veterans, Mental Illness*, <https://www.va.gov/homeless/nchav/research/population-based-research/mental-illness.asp> (last updated June 14, 2017). “Up to 80% of homeless Veterans suffer from mental health and/or substance use disorders.” *Id.*

¹²⁵ U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, *The 2018 Annual Homeless Assessment Report to Congress* 54 (Dec. 2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> [hereinafter HUD REPORT].

¹²⁶ *Id.* at 55.

¹²⁷ U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, *The 2016 Annual Homeless Assessment Report to Congress* 54 (Nov. 2016), <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>.

¹²⁸ See HUD Exchange, HUD Announces a Decline in Veteran Homelessness (Nov. 1, 2018), <https://www.hudexchange.info/news/hud-announces-a-decline-in-veteran-homelessness> (attributing the success in housing veterans to a variety of programs, including most effectively the joint HUD-VA Supportive Housing Program).

¹²⁹ Homeless Veterans, 82 Fed. Reg. 51,158, 51,158-59 (Nov. 3, 2017) (codified at 38 C.F.R. pt.61).

¹³⁰ Austin Igleheart, *VA Amends Regulations to Expand Eligibility for Benefits for Homeless Veterans*, NACO (Nov. 7, 2017),

However, homelessness demands more than additional housing or more hospitals. It requires attention to the veterans themselves—to the personal needs and obstacles that veterans face in the civilian world. Most homelessness prevention programs administered by VA are not available to veterans who have received bad paper discharges. This barrier to housing automatically excludes individuals that are likely in the greatest need of it.

When analyzing veteran homelessness, experts frequently identify substance abuse and mental illness as significant contributing factors to many veterans' struggles and inability to find shelter.¹³¹ The link between mental illness and homelessness must be properly addressed to prevent a surge in homelessness with GWOT veterans. As health law expert Barbara Weiner observes:

Most states have been unwilling to acknowledge that there is a core group of mentally ill people who need longer term hospitalization and if the state will not provide it, no other institution will. Many of these patients are homeless and former Vietnam veterans. *There is great fear that with the high rates of posttraumatic stress disorder among veterans of the Iraq war that we will be creating another group of people who also will end up homeless and mentally ill who do not access sufficient services.*¹³²

Furthermore, it has already been established that GWOT veterans are experiencing mental illness at high rates.¹³³ A study by the VA Office of Inspector General revealed that the “[p]resence of mental disorders (substance-related disorders and/or mental illness) is the strongest predictor of becoming homeless after discharge from active duty.”¹³⁴ Additionally, the study stated that the veterans who experienced homelessness following military separation were younger, paid less while in service, and more likely to be diagnosed with a mental disorder or TBI upon their separation from active duty.¹³⁵

In 2015, a group of physicians, psychologists, and policy experts researched the discharges of 448,290 active-duty servicemembers who had been deployed to Iraq or Afghanistan, separated from the military between 2001 and 2011, and who were eligible for and used VA services.¹³⁶ Although only 5.6 percent of the servicemembers had been separated for misconduct, this group of veterans represented 25.6 percent of homeless veterans when first visiting VA.¹³⁷ Within a year, this group of veterans accounted for 28 percent of homeless veterans, and 20 percent within five years.¹³⁸ As a matter of importance, veterans who received dishonorable discharges were not included in the study as they are ineligible for VA services. Thus, the total number of veterans actually separated from service for conduct-related reasons could in fact be higher. This gap in statistical knowledge makes it more difficult not only to accurately count the number of homeless veterans who were discharged under other-than-honorable conditions, but also to effectively address the issue of veteran homelessness.

<https://www.naco.org/blog/va-amends-regulations-expand-eligibility-benefits-homeless-veterans>.

¹³¹ U.S. DEP'T OF VETERANS AFFAIRS, OFFICE OF INSPECTOR GENERAL, *Homeless Incidence and Risk Factors for Becoming Homeless in Veterans* ii (May 4, 2012), <https://www.va.gov/oig/pubs/VAOIG-11-03428-173.pdf> [hereinafter VA OIG REPORT].

¹³² Barbara Weiner, 1 HEALTH L. PRAC. GUIDE § 17:9 (Mar. 2016) (emphasis added).

¹³³ RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, *Invisible Wounds: Mental Health and Cognitive Care Needs of America's Returning Veterans* (2008), http://www.rand.org/content/dam/rand/pubs/research_briefs/2008/RAND_RB9336.pdf (noting that in 2008, 18.5 percent of GWOT veterans met criteria for PTSD, depression, or both).

¹³⁴ VA OIG REPORT, *supra* note 131, at ii.

¹³⁵ *Id.*

¹³⁶ Adi V. Gundlapalli, et al., *Military Misconduct and Homelessness Among US Veterans Separated from Active Duty, 2001-2012*, 314 J. AM. MED. ASS'N. 832 (2015).

¹³⁷ *Id.*

¹³⁸ *Id.*

4. Suicide

Although death is an accepted consequence of war, this should not also be true of the men and women who are no longer fighting abroad, but instead are struggling as civilians at home. Although veteran suicides have decreased,¹³⁹ the numbers are still ghastly. In 2014, although only constituting 8.5 percent of the population, an average of 20 veterans died from suicide every day, accounting for 18 percent of all deaths from suicide among adults in the United States.¹⁴⁰

Furthermore, in 2014, 65 percent of veterans who committed suicide were 50 years or older.¹⁴¹ This statistic demonstrates that Vietnam-era and other older veterans are committing suicide at a higher rate than younger veterans. This sobering fact can possibly best be understood through the lens of the late diagnoses of PTSD and the decades long struggles that Vietnam veterans have faced. These deaths can and should serve as a reminder of the consequences of war and the absolute need to address both mental illness and unfairly characterized discharges of our veterans.

In an effort to decrease veteran suicide, VA created a 24/7 Veterans Crisis Line (VCL) that Veterans can call to speak, chat, or even text with a suicide prevention and crisis intervention responder.¹⁴² Since the creation of the VCL in 2007 through June 2018, the VCL answered over 3.5 million calls, engaged in over 397,000 chat exchanges, and responded to nearly 92,000 text messages.¹⁴³ Additionally, the VCL has the ability to dispatch emergency services to callers believed to be experiencing an imminent suicidal crisis. Nearly 93,000 emergency services have been dispatched in this manner as well as over 582,000 referrals to local VA suicide prevention coordinators have been provided by the VCL.¹⁴⁴ However, homeless and impoverished veterans may not be as likely to access these services as telephones and computers may be less available to them.

Additionally, VA has aggressively undertaken new initiatives to prevent veteran suicide, including predictive analytics to identify at-risk veterans, increasing mental health services specifically for women, expanding telemental health services, providing mobile applications, utilizing VA community-based Vet Centers, offering telephone coaching for veteran families, and establishing public-private partnerships with universities and professional training institutions to reach more veterans.¹⁴⁵ However, if veterans who have other than honorable discharges are restricted from accessing VA mental health care, these initiatives may never reach the veterans that need them most.

¹³⁹ See HUD REPORT, *supra* note 125, at 55.

¹⁴⁰ VA SUICIDE PREVENTION PROGRAM, *Facts about Veteran Suicide* (July 2016), https://www.mentalhealth.va.gov/docs/OMHSP_Suicide_Prevention_Fact_Sheet_Updated_June_2018_508.pdf. In 2014, a veteran's risk for suicide was 21 percent higher than for U.S. adults. *Id.*

¹⁴¹ *Id.*

¹⁴² Press Release, U.S. Dep't of Veterans Affairs, VA's Veterans Crisis Line Improves Service with Third Call Center Opening in Topeka, Kansas (June 8, 2018), <https://news.va.gov/press-room/vas-veterans-crisis-line-improves-service-with-third-call-center-opening-in-topeka-kansas/>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ VA SUICIDE PREVENTION, *supra* note 140.

B. Recent Legislation

The focus of this Note is to draw attention to the effects of bad paper discharges on veterans, specifically Vietnam veterans, in order to prevent similar catastrophic inequality and injustice for GWOT veterans. History has come to show that improper assessment of mental health, in the form of discharging veterans with bad paper rather than diagnosing and treating any underlying psychiatric disorders, can lead to disastrous consequences including extreme poverty, homelessness, inadequate medical care, and even suicide.

The 2017 National Defense Authorization Act was signed by President Obama on December 23, 2016.¹⁴⁶ The National Defense Authorization Act amended 10 U.S.C. §1553 to add subsection (d)(3), which requires DRBs to liberally consider whether PTSD or TBI “potentially contributed to the circumstances resulting in the discharge of a lesser characterization.”¹⁴⁷

During his testimony before the House Committee on Veterans’ Affairs, former VA Secretary David Shulkin was asked how he would attempt to prevent veteran suicides.¹⁴⁸ Shulkin stated that he wanted to start providing mental health care to Veterans who receive other-than-honorable discharges.¹⁴⁹ Shulkin stated that, as Secretary, he had the authority to provide such care even without corresponding legislation.¹⁵⁰ Secretary Shulkin’s plan to provide veterans with other-than-honorable discharges access to 90 days of emergency mental health care took effect in July 2017.¹⁵¹ However, very few veterans have taken advantage of the newly available treatment, and the provisions do not provide coverage for veterans with bad conduct or dishonorable discharges, leaving that population of veterans without a clear path to treatment.¹⁵² In 2018, legislation lifting the 90-day cap was passed.¹⁵³

CONCLUSION

For decades, late and absent diagnoses of PTSD caused immense struggles for Vietnam veterans through unnecessary economic and physical stress. Similarly, GWOT veterans have already begun to feel this strain through inadequate disability compensation and stigmatization due to inappropriately assigned military discharges. As a country, the United States must take responsibility for the negative consequences of war, beginning with the appropriate recognition of the mental illnesses that plague our servicemembers and veterans. The cycle of mental illness, bad paper, unemployment, homelessness, and suicide is one that needs to be stopped before it continues indefinitely. Focus must be drawn to the psychological effects of war and the long-lasting consequences that travel back with every servicemember. Through these efforts, the causal chain of veteran-related issues can finally begin to unlink.

¹⁴⁶ National Defense Authorization Act of 2017, Pub. L. No. 114-328 §§ 533(b), 535, 130 Stat. 2000 (2016).

¹⁴⁷ *Id.*

¹⁴⁸ *Shaping the Future: Consolidating and Improving VA Community Care: Hearing Before the Comm. On Veterans Affairs*, 115th Cong. 26 (2017) (testimony of David Shulkin, Secretary, U.S. Dep’t of Veterans Affairs).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ U.S. DEP’T OF VETERANS AFFAIRS, FACT SHEET: EMERGENT MENTAL HEALTH CARE FOR FORMER SERVICE MEMBERS (June 2017), https://www.mentalhealth.va.gov/docs/Fact_Sheet-Emergent_Mental_Health_Care_Former_Service_Members.pdf.

¹⁵² Steve Walsh, *VA Program to Lower Suicide Rate Has Few Takers*, KPBS (Sept. 4, 2018), <https://www.kpbs.org/news/2018/sep/04/va-program-lower-suicide-rate-has-few-takers/>.

¹⁵³ *See id.*