



# Veterans Legal Foundation, Inc.

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## **A Survey of Veterans Incarcerated in the Pennsylvania State Correctional System to Support the Need for Post-Conviction Review**

18 November 2017

Revision 1.01

### **1. Purpose and Problem Statement**

The survey's purpose was to confirm the contention that veterans with Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) and incarcerated in the commonwealth's correctional system may not have had fair consideration of these conditions during the sentencing phase of their trials and during their hearings.

### **2. Background**

Higher incidences of PTSD and TBI (a condition poorly understood, and the symptoms may be similar) among combat veterans can be expected in this population than in the general population; and those with TBI are more likely to have PTSD also.<sup>1</sup> PTSD itself is associated with other morbidities (comorbidities), such as drug and alcohol abuse. In short, combat veterans are a particularly vulnerable population.

The prevalence of PTSD among male veterans may be up to four to five times higher than in the general population at any given time.<sup>2</sup>

However, not until 1980 did the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* include specific symptoms for a reliable diagnosis of PTSD. Not until 2007 did the Department of Veterans Affairs field a mandatory TBI screening protocol. At that time, the Department of Defense had yet to issue its post-deployment protocol.

If the Department of Corrections has not correctly identified all the veterans incarcerated within its facilities, considering the above history, the risk for incarcerated veterans not being evaluated for PTSD or TBI and their consideration during a hearing is heightened. The primary reason behind this lies with the courts system upon which they depend for information.

For example, the Courts of Common Pleas have not been required to formally identify veterans appearing before them. Currently, unless a defense attorney states his client is a veteran, a presentence investigation report (PSI), ordered by a judge, might or might not identify a veteran – when it occurs. Furthermore, it is generally up to the judge to call for a psychiatric or psychological examination.<sup>3</sup>

As another example, the advent of Veterans Treatment Courts was no earlier than 2008. Typically, the offenses in these courts rise no higher than the level of a misdemeanor, and most would not involve state incarceration. Forgetting the categories and levels of offense involved (there is no required uniformity),<sup>4</sup> most veterans could not expect to appear before them. For the 845,507 veterans in the commonwealth,<sup>4</sup> twenty veterans treatment courts exist, distributed with no overarching plan in mind.

Consequently, it is not a matter of policy or standard operating procedure in the judicial system to determine an individual's veteran status or to evaluate veterans for PTSD or TBI. The potential for veterans not having their PTSD or TBI (or both) considered during sentencing has been unwittingly built into the system.

The assistance of the Lehigh Valley Military Affairs Council (LVMAC), a partner organization, was sought to guide the Veterans Legal Foundation in the conduct of a survey.

### 3. Methodology:

A pragmatic approach was developed to validate or refute the question: Was TBI or PTSD considered as a migrating factor during sentencing or in postconviction hearings?

While a 95 percent confidence level and 5% +/- margin of error is most often sought in academic and applied science circles, a 90% confidence level using a Student-t distribution was believed sufficient from a “business standpoint”, considering the difficulties of surveying within a prison system and the resources the Veterans Legal Foundation had at its disposal to fund, distribute, explain, monitor, and collect the survey. For instance, self-guided electronic surveys were not possible (think *SurveyMonkey*© as an example). Also, it was expected that there would be prisoners who would doubt the effort’s value and, therefore, would not participate.

For the purposes of this survey, the following criteria applied:

- The veteran must be incarcerated in a correctional facility operated by the Commonwealth of Pennsylvania.
- The veteran must have served on Active Duty in one of the Armed Forces of the United States (one of the military services or the U.S. Coast Guard).
- The character of discharge was not used as exclusionary criterion.
- All service eras would be surveyed.

The survey used the questionnaire in Appendix A. A minimum essential information philosophy was used, especially considering the above mentioned difficulties. It was tailored to the issue, while also providing some key demographics on the population to appreciate the range of veterans involved.

From January through April of 2017, the Veterans Legal Foundation working with Vietnam Veterans of America’s Pennsylvania State Veterans Council surveyed veterans incarcerated in Department of Corrections State Correctional Institutions (SCI). The survey was conducted with the consent of the Department of Corrections (DOC) personnel.

There were limitations and impediments to the distribution and administration of the surveys. Distribution networks varied from institution to institution causing difficulties distributing and retrieving completed surveys. Surveys were self-administered by the inmates with little guidance and explanation. Surveys were not always fully completed, which rendered some surveys unusable.

Eight state correctional institutions ultimately participated: Benner Township, Dallas, Graterford, Houtzdale, Mahoney, Retreat, Smithfield, and Somerset. Of the 1,244 veterans incarcerated in these eight facilities<sup>5</sup>, 161 replied to the survey. All were male veterans. Within the survey group a 90% confidence-level was achieved with a 7% +/- margin of error, slightly less than desired but sufficient to affirm the validity of the problem statement above the level of conjecture.

### 4. Results

See selected charts in Appendix B for additional details. Some key observations follow.

Of those reporting, 19% claimed the DOC had not identified them as being veterans. This implies the judicial courts may not be identifying a significant number of veterans appearing before them or identifying information is not being transferred from the courts to the DOC.

Of those reporting, 21% were incarcerated within 6 years of discharge from military service. Of these 46% were combat veterans; 42% did not have Honorable Discharges; 24% were from the Vietnam era. All are markers that the individual appearing before the courts may have been having transition adjustment and/or behavioral health issues. Life sentences were given to 42% of those in this grouping.

Combat veterans represent 35% of the population responding. While only 56 combat veterans among the 161 were identified, they represented 58% of those claiming they were diagnosed with PTSD and 56% of those diagnosed with TBI.

Of the respondents, at a minimum, 35% of the veterans have not been evaluated for PTSD, and 36% have not been diagnosed for TBI at all. About 37% claimed they had been diagnosed with PTSD, but only 10% claimed the same for TBI. Obversely, about 22% claimed they had been diagnosed as not having PTSD and 40% that they did not have TBI.

However, of those reporting, 56% claim they were not diagnosed with PTSD at the time of their last proceeding (trial, appeal or hearing), and 73% indicated the same for TBI.

A lack of awareness of TBI can also be inferred based upon the responses.

Of those reporting, 19% claim their diagnosed PTSD was not recognized during their last proceeding (trial, appeal or hearing). In these proceedings, 79% are from war/conflict era and 43% are combat veterans. Most of these situations (70%) do not involve those with life sentences. The issue is much broader.

Of those responding, 44% claim they were not been represented by an attorney during the last proceeding – whether a trial, appeal or a hearing. This figure seems high. There is reason to conjecture that public defenders are not viewed as adequately representing this population as private attorneys. It may point to proper representation being an issue.

## 5. Conclusions

Despite the survey limitations of access, distribution and the inconsistencies resulting from the inmates' self-administration, there are enough indicators supporting the contention that a thorough post-conviction review for the presence of PTSD and TBI is needed. It is not a meritless contention that incarcerated veterans may not have had fair consideration of these conditions during the sentencing phase of their trials and during their hearings.

The population affected is significant and across all eras of service. The present day veteran is facing the same sentencing issues as past eras. The need for review is not confined to those of the Vietnam era, the initial impetus behind this effort.

The issue, by wide margin, is not confined to those with life sentences seeking clemency. This is mentioned because the issue of the fairness of life without parole may be conflated with this survey effort. The purpose of this survey is broader in nature.

At least a third of the veterans population within the DOC's facilities has never been evaluated for either condition which suggests unfairness and inequalities during the sentencing or hearing processes. Indeed, the survey establishes there are instances where hearings, trials, and appeals have occurred where PTSD or TBI was diagnosed but not recognized during the proceeding.

If the survey were extended to the remaining prisons 16 prisons (3,279 veterans were incarcerated in the entire state system as of 20 December 2016), we are sufficiently confident the contention would be supported.

## 6. Recommendations

The results clearly suggest attention is need to the matter. Create legislation which requires the following:

- a. Identification of Veterans:** DOC needs to conduct a thorough, proof-positive identification of all U.S. Armed Forces veterans in their correctional facilities.
- b. PTSD and TBI Assessments:** DOC ensures a professional evaluation of all its incarcerated veterans for the presence of PTSD or TBI resulting from active duty service has occurred and develops a list for sentencing review. If the individual has not been properly evaluated for the presence of these conditions, a clinical assessment will be done.
- c. Special Hearings:** For those identified with the condition of PTSD and/or TBI and have not had both or either of these diagnoses considered during their original sentencing or in previous hearings, a special hearing will be conducted by an appropriate authority determined by the judiciary; and carried out in a timely manner as defined in any proposed legislation.
- d. Prevention Measures:** To help prevent future problems, district Courts of Common Pleas or courts of appeal formally identify veterans, assess them for the presence of PTSD or TBI, and consider these conditions during their sentencing phase.

See the Appendix C (Fact sheet) for a more complete list of details needed in legislation.

Appendices:

- A - PVJP Survey Questionnaire
- B - Extract of Data Analysis
- C - PVJP Fact Sheet for Legislation

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<sup>1</sup> National Disability Council. *Invisible Wounds: Serving Service Members and Veterans with PTSD and TBI*. March 4, 2009. Web. <<https://ncd.gov/publications/2009/March042009>>. pg 21b.

<sup>2</sup> Jaime L. Gradus. "Epidemiology of PTSD." U.S. Dept. of Veterans Affairs. 2017. Web. <<https://www.ptsd.va.gov/professional/PTSD-overview/epidemiological-facts-ptsd.asp>>

<sup>3</sup> Rule 702, PA Code 234. 2017. Web. <<https://www.pacode.com/secure/data/234/chapter7/s702.html>>

<sup>4</sup> VA Central Office. "Geographical Distribution of VA Expenditures (GDX)". U.S. Dept. of Veterans Affairs. 2016. Web. < [http://www.va.gov/vetdata/docs/GDX/GDX\\_FY16.xlsx](http://www.va.gov/vetdata/docs/GDX/GDX_FY16.xlsx)>

<sup>5</sup> Pennsylvania Dept. of Corrections. "DOC Inmate Veteran Population" Report of 12/20/2016. Print.

# Veterans Justice Project Questionnaire

Date Completed:  Month/Day/Year (MM/DD/YYYY)

**Note!** Do not complete this form unless you served on Active Duty in the U.S. Army, Marines, Navy, Air Force or Coast Guard  
**PRINT NEATLY! RETURN the form NO LATER THAN 15 April 2017 to:**  
*PA Veterans Justice Project, ATTN: Rich Carter, P.O. Box 155, Chester, PA 19016*

**Question**

**Explanation**

Name:  Full Name

Prison ID Number:

Prison:  Current Prison

Date of Birth:  Month/Year (MM/YYYY)

Active Duty Start Date:  Month/Year (MM/YYYY)

Active Duty End Date:  Month/Year (MM/YYYY)

Character of Final Discharge:  Enter HD (Honorable), GD (General, Under Honorable Conditions), OTH (Under Other Than Honorable Conditions), (BCD) Bad Conduct, (DD) Dishonorable, or UD (Uncharacterized). See DD Form 214, Block 24.

|                                      | Yes | No |  |
|--------------------------------------|-----|----|--|
| At some time, received HFP/IDP:      |     |    | [ Hostile Fire Pay or Imminent Danger Pay (also called Combat Pay) -- that is, you served in a combat zone/theater |
| DOC has identified you as a Veteran: |     |    |  |

Offense(s) for which convicted:

[ Add additional offenses for which convicted and currently sentenced to the back of the sheet.

Length of the Sentence:  Number of years or, when appropriate, enter "Life"

Prison term commenced:  Month/Year (MM/YYYY)

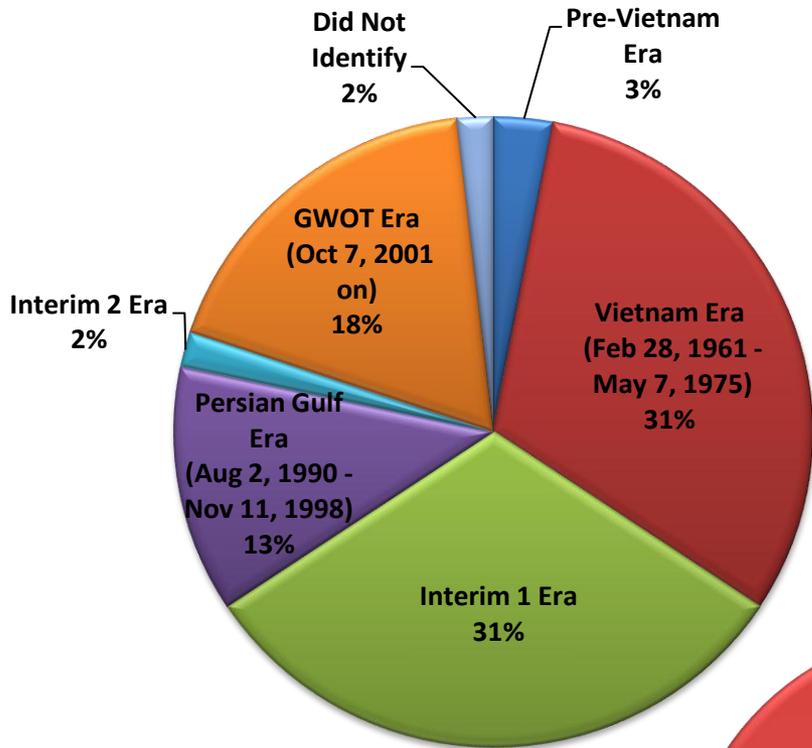
Category of last hearing:  Enter (P) Pardon, (C) Clemency, (COM) Commutation, (PL) Parole

Date of the last hearing:  Month/Year (MM/YYYY)

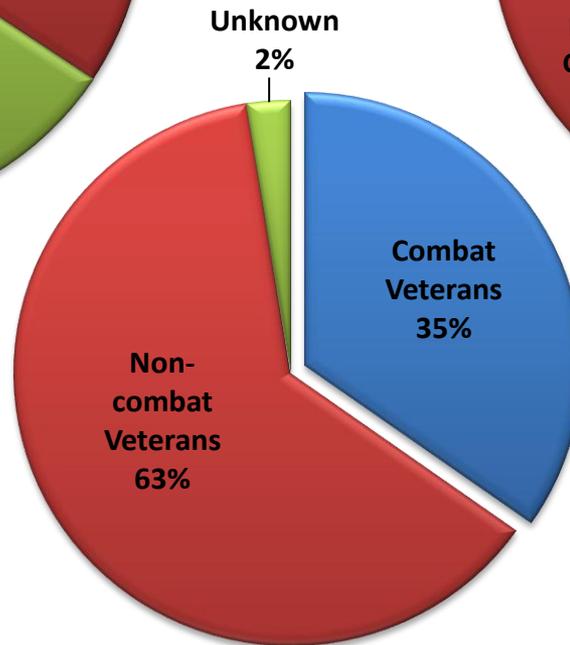
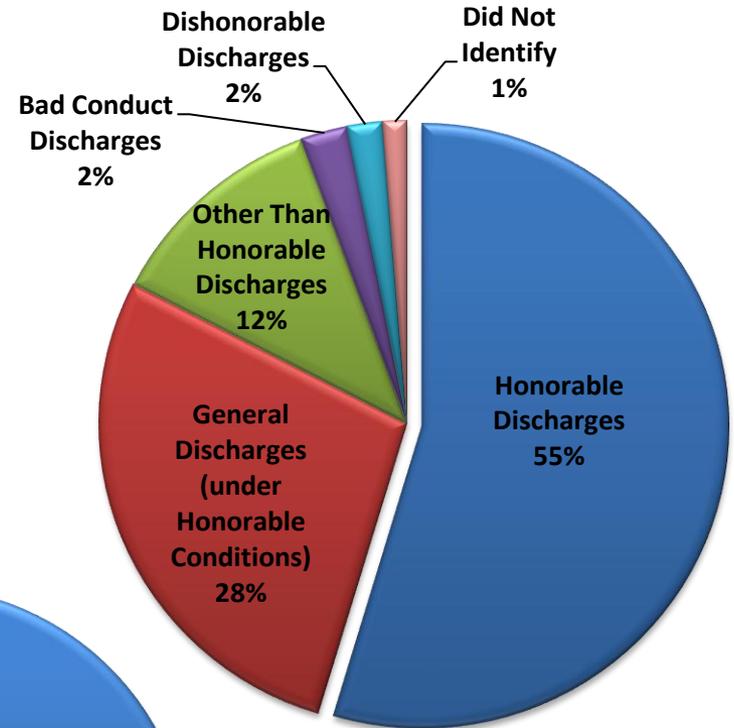
Number of hearings:  Total number of postconviction hearings held regardless of category

|  | Yes | No |                                       |
|--|-----|----|---------------------------------------|
| Represented by an attorney at last hearing:          |     |    |                                       |
| Diagnosed with PTSD at the time of the last hearing: |     |    | PTSD = Post Traumatic Stress Disorder |
| PTSD was service-connected:                          |     |    |                                       |
| PTSD was considered during last hearing:             |     |    |                                       |
| Diagnosed with TBI at the time of the last hearing:  |     |    | TBI = Traumatic Brain Injury          |
| TBI was service-connected:                           |     |    |                                       |
| TBI was considered during last hearing:              |     |    |                                       |
| Currently diagnosed with PTSD:                       |     |    | <b>Not Diagnosed</b>                  |
| Currently diagnosed with TBI:                        |     |    |                                       |

## Era of Service Distribution



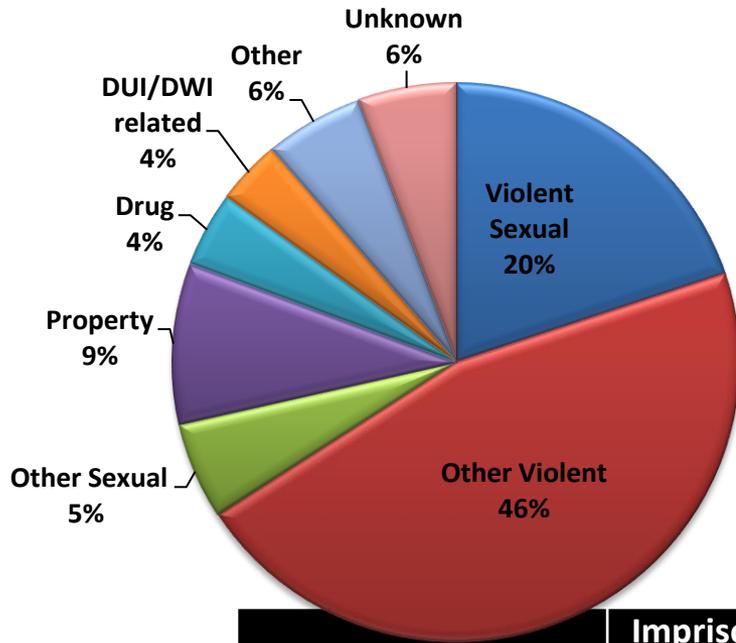
## Discharge Distribution



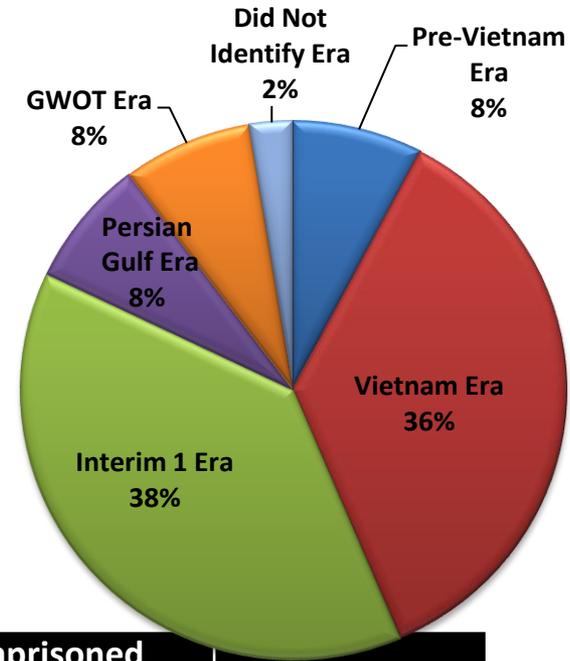
## Combat Veterans

| Other General Demographics                               | Data     |
|--|----------|
| Number of SCI facilities surveyed                        | 8        |
| Number of incarcerated veterans responding               | 161      |
| Total population of incarcerated veterans SCI's surveyed | 1244     |
|  |          |
| Average age currently                                    | 55       |
| Median age currently                                     | 56       |
| Average age when sentenced                               | 42       |
| Median age when sentenced                                | 48       |
|  |          |
| Average maximum sentence excluding life sentences (Yrs)  | 19.7     |
| Median maximum sentence excluding life sentences (Yrs)   | 16.0     |
|  |          |
| Typical veteran serving since (average)                  | 2004     |
| Typical veteran serving since (median)                   | 2009     |
| Longest serving since                                    | 1968     |
|  |          |
| Number incarcerated within 6 years of discharge          | 33 (21%) |
| Number of life sentences within 6 years of discharge     | 14       |
| Number incarcerated within 12 years of discharge         | 56 (35%) |
| Number of life sentences within 12 years of discharge    | 21       |

## Offense Type Distribution



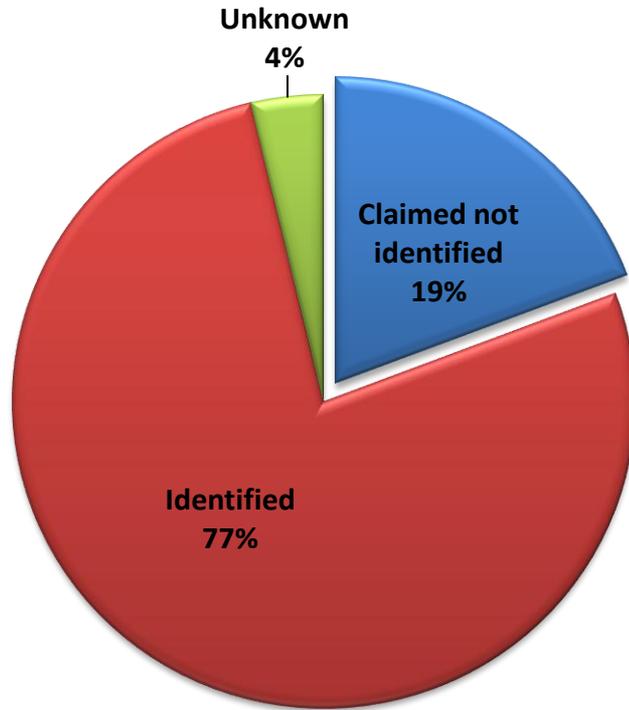
## Life Sentences by Service Era



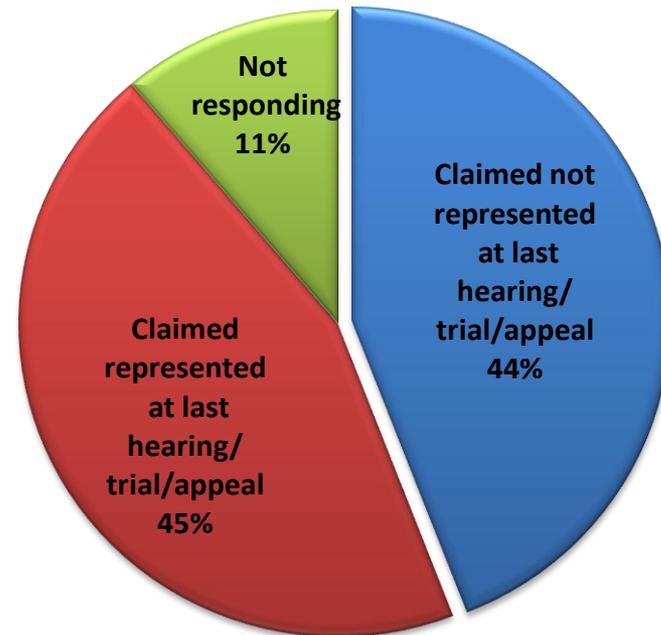
| Most Serious Current Offense | Imprisoned Non-veterans (Nationally) | Imprisoned Veterans (Nationally) | Imprisoned Veterans (DOC) |
|------------------------------|--------------------------------------|----------------------------------|---------------------------|
| Violent Sexual               | 23.3%                                | 35.4%                            | <b>19.9%</b>              |
| Other Violent                | 28.9%                                | 28.9%                            | <b>46.0%</b>              |
| Other Sexual                 | Not Recorded                         | Not Recorded                     | <b>5.6%</b>               |
| Property                     | 17.2%                                | 11.7%                            | <b>9.3%</b>               |
| Drug                         | 19.3%                                | 14.2%                            | <b>4.3%</b>               |
| DUI/DWI                      | 4.1%                                 | 2.8%                             | <b>3.7%</b>               |
| Other                        | 7.1%                                 | 7.0%                             | <b>5.6%</b>               |
| Unknown                      | NA                                   | NA                               | <b>5.6%</b>               |
| <b>Total</b>                 | <b>100.0%</b>                        | <b>100.0%</b>                    | <b>100.0%</b>             |

National Statistical Source: U.S. DOJ Special Report "Veterans in Prison and Jail, 2011-12", Dec 2015

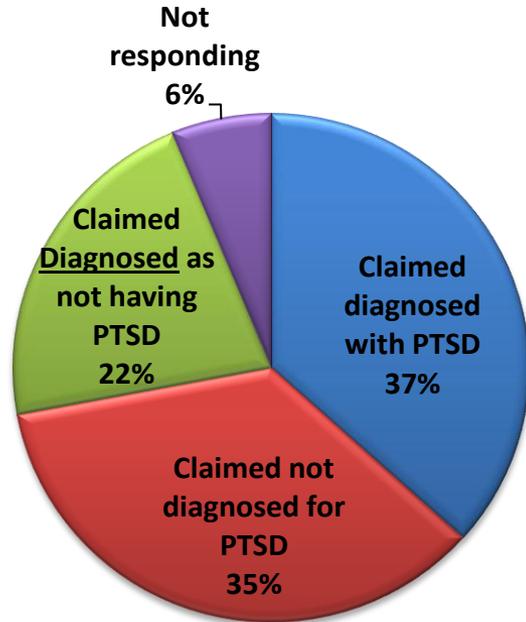
## DOC Recording of Veterans



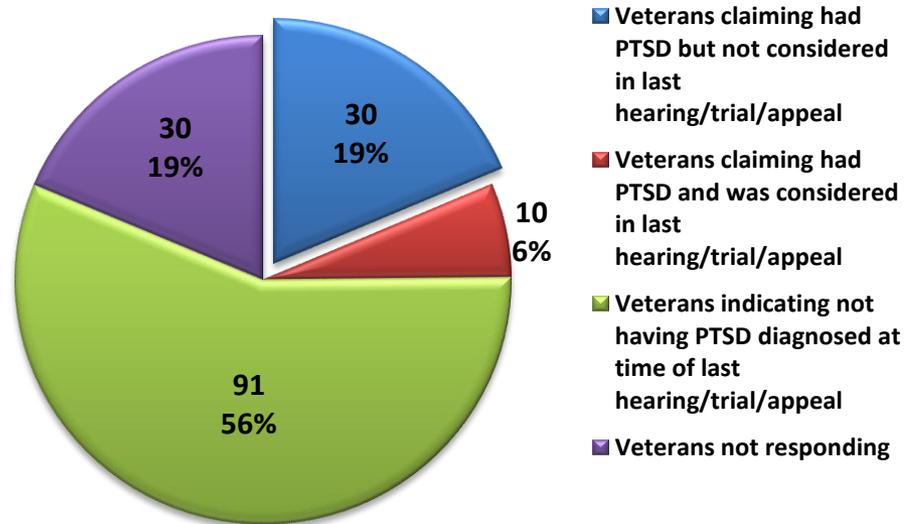
## Attorney Representation



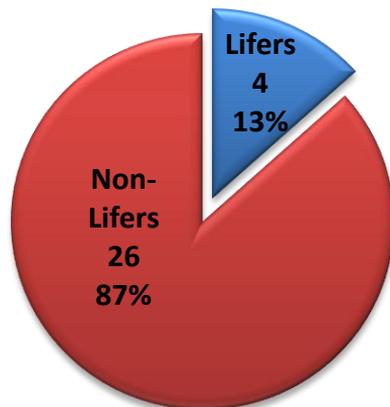
## PTSD Distribution



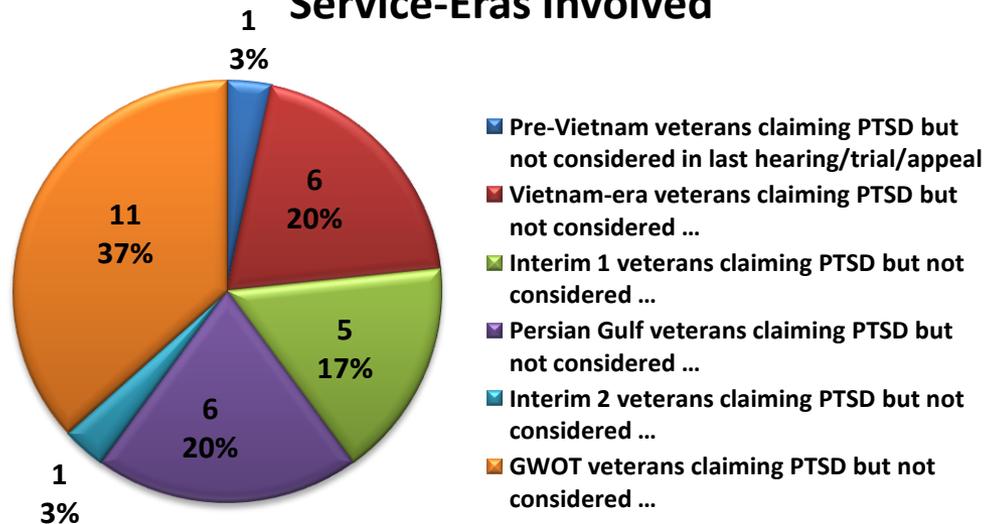
## PTSD Not Considered in Proceeding



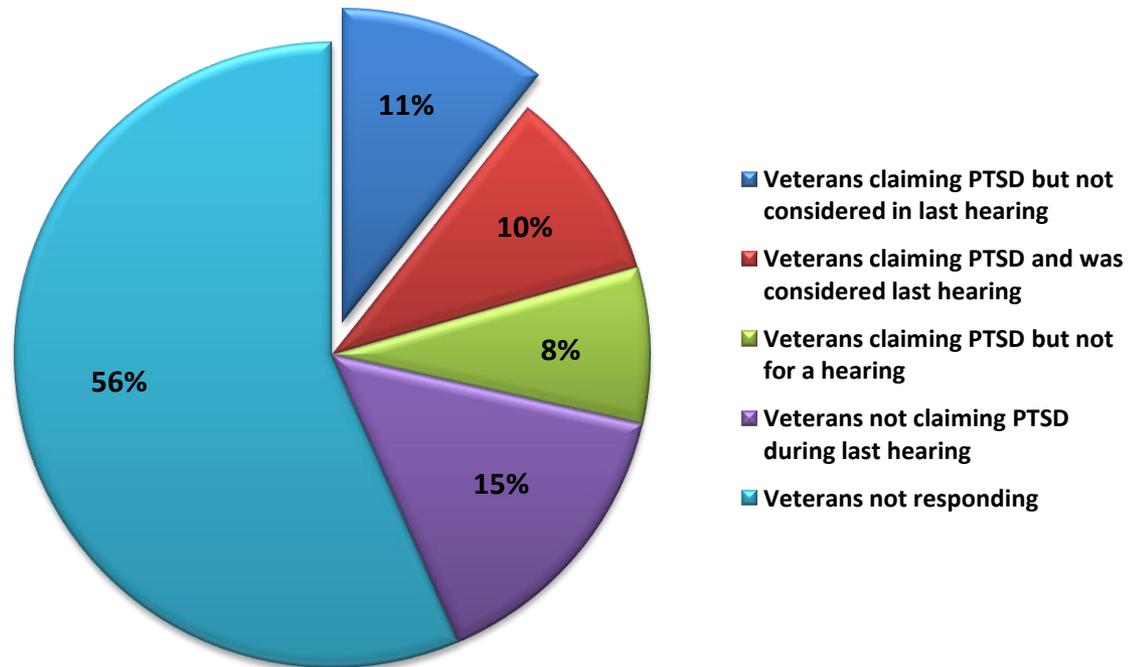
## Those with PTSD Not Considered Having Life Sentences



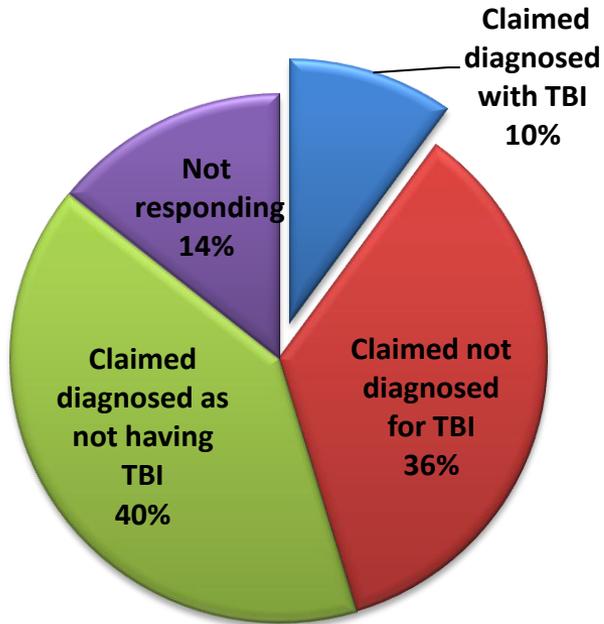
## Service-Eras Involved



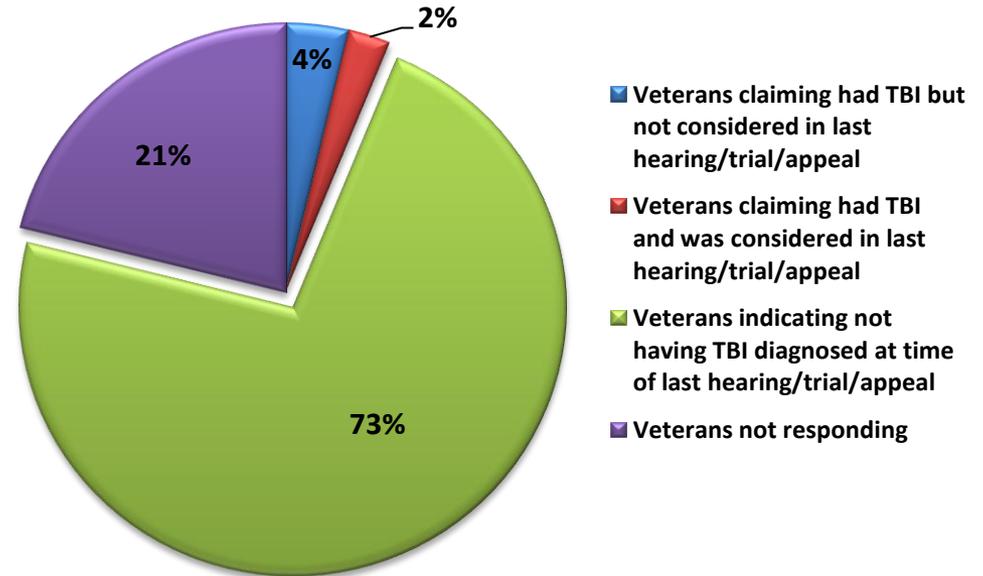
## PTSD Not Considered in Last DOC Hearing



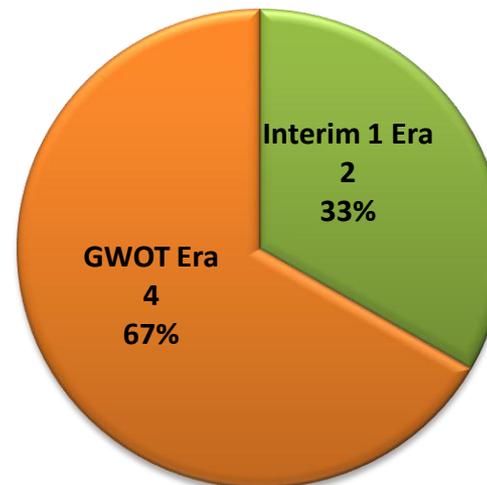
## Traumatic Brain Injury Distribution



## TBI Not Considered in Proceeding



## Service-Era Involved When Diagnosed with TBI But Not Considered in Proceeding





# Fact Sheet

## Pennsylvania Veterans Justice Project

18 November 2017



**Subject:** Post-Conviction Review Legislation

**What We Seek:** Legislation which would allow sentenced veterans to apply for a post-conviction review of their sentence if Post-traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) were incurred while serving their country.

**Why We Seek It:** Not until 1980 did the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* include specific symptoms for a reliable diagnosis of PTSD. Not until 2007 did the Department of Veterans Affairs field a mandatory TBI screening protocol (The Department of Defense had yet to issue its post-deployment protocol). Therefore, veterans in the state prison system are likely to have been convicted without consideration of the effects of PTSD and/or TBI during their sentencing. It is incumbent on state government to rectify the situation.

**Assumption:** The Department of Corrections (DOC) and the Pennsylvania Board of Probation and Parole (PBPP) have been consolidated by Executive Order, or other means, by the time of enactment of legislation.

### What We Want to See in Legislation:

- Department of Corrections (DOC) conducts a systematic, proof-positive identification of all U.S. Armed Forces veterans in their correctional facilities for PTSD or TBI resulting from active duty service and develops a list for sentencing review and conducts hearings, such that:
  - If professionally certified, clinical evaluations and determinations for PTSD and TBI have not already occurred on the individual, a clinical evaluation suitable for a hearing review or court appeal will be done at no cost to the veteran.
  - In such instances, a professionally validated PTSD and TBI screening tools are administered and interpreted by qualified professionals.
  - There is assurance those conducting psychological and neurological evaluations are properly trained in diagnosing PTSD and TBI. The Veterans Health Administration may perform such evaluations.
  - Any veteran with a confirmed diagnosis of PTSD or TBI resulting from military service and where the condition was not affirmatively considered during trial sentencing is to be given a hearing.
  - The eligible veteran undergoing sentencing reconsideration is provided advocacy or legal representation by an individual trained to express to the hearing board the severity and implications of a PTSD or TBI diagnosis as it related to the original conviction leading to incarceration.
  - The hearing board is instructed on the effects of PTSD and TBI regarding behavior.
- The additional conditions for eligibility for this review are:
  - Only active duty service in the armed forces will be an *a priori* condition for the above review.
  - The service era is not a condition for review as a matter of uniform and equal treatment.
  - The character of discharge is not a condition for review as it may have been affected by the condition.
  - Limiting service to being in a combat zone or a hazardous duty area overlooks how these injuries may occur.
  - Legislation is not limited to those with a homicide conviction. Such thinking fails to recognize the majority of crimes that result in the incarceration of veterans and that having PTSD or TBI does not necessarily lead to violent crimes.

- A separate appropriation line item is created and the needed funding be assigned to DOC to ensure:
  - all incarcerated veterans are aware of this legislation
  - sufficient funds for clinical evaluation are set aside
  - appropriate assistance to submit requests for evaluation and the drafting and submitting of post-conviction motions related to this matter.
- In addition to help prevent future problems, district Courts of Common Pleas or courts of appeal shall:
  - formally determine if a defendant is a veteran.
  - ensure the veteran has been evaluated using validated PTSD and TBI screening tools administered and interpreted by a qualified professional. This is to be done at no cost to the veteran, if has not been done.
  - include the results and interpretation in the pre-sentencing investigation (PSI) for sentencing consideration.
  - ensure during the sentencing phase, advocacy or legal representation is provided to the veteran by an individual trained to express to the court the severity and implications of a PTSD or TBI diagnosis.
  - ensure the judge is aware of the effects of PTSD and TBI regarding behavior.

**Who We Are:** The Veterans Legal Foundation, Inc. (VLF) is an IRS 501(c)(3) nonprofit organization created to advocate for incarcerated veterans and to provide incarcerated reentry services, among other services.

**Pennsylvania Veterans Project (PVJP):** This is a special initiative of the Veterans Legal Foundation which involves a coalition seeking to give veterans in the Commonwealth's correctional system an effective voice outside the prison walls in advocating for needed legislative and administrative reforms.

**Points of Contact:** Melvin Dill, Director, 484-350-6945 or Richard Carter, Chairman, 215-390-4114; [chesterreentry@gmail.com](mailto:chesterreentry@gmail.com) or Rich Hudzinski, Chair, Legislative Affairs, PA State Council, Vietnam Veterans of America, [rhudzinski@verizon.net](mailto:rhudzinski@verizon.net)