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Chapter 3 INCARCERATED AND FUGITIVE FELON VETERANS

3.01 Introduction

When the Vocational Rehabilitation and Employment (VR&E) case manager receives notification that a Veteran is currently incarcerated or is a fugitive felon, the case manager must inform the Veteran and all service providers about benefit changes. Section 505 of Public Law (Pub. L.) 107-103, The Veterans Education and Benefits Expansion Act of 2001, contains the benefit restrictions and provisions of law on fugitive felons. These provisions are designed to assist law enforcement agencies in the apprehension of fugitives, and prevent fugitive felons from receiving Department of Veteran Affairs (VA) benefits. The chapter also contains the statutory and regulatory provisions covering general information about benefit changes for incarcerated Veterans and fugitive felons.

3.02 References and Resources

Laws: Pub. L. 107-103, Section 505
 38 United States Code (U.S.C.) 3108
 38 U.S.C. 5313B

Regulations: 38 Code of Federal Regulations (CFR) 3.103
 38 CFR 21.276
 38 CFR 21.283
 38 CFR 21.284(a)(3)
 38 CFR 21.324(b)
 38 CFR 21.350
 38 CFR 21.364

VA Forms (VAF): Fugitive Felon Program FFP-3, VA Investigative Summary
 Fugitive Felon Program FFP-4, Feedback Form
 VAF 119, Report of Contact
 VAF 5655, Financial Status Report
 VAF 21-4193, Notice to Department of Veterans Affairs of
 Veteran or Beneficiary Incarcerated in Penal Institution
 VAF 28-1900, Disabled Veterans Application for Vocational
 Rehabilitation
 VAF 28-1905, Authorization and Certification of Entrance or
 Reentrance into Rehabilitation and Certification of Status

3.03 Definitions

a. Felony

A felony is defined as a serious crime characterized under federal law and many state statutes as any offense punishable by death or imprisonment in excess of one year.

b. Incarcerated Veteran

Any Veteran physically residing in a federal, state or local prison, jail, or other penal institution for a felony is defined as incarcerated Veteran.

A Veteran pursuing a rehabilitation program under Chapter 31 while residing in a residential re-entry center (formally known as a halfway house), or participating in a work-release program in connection with the conviction of a felony is not considered an incarcerated Veteran.

c. Fugitive Felon

A fugitive felon is a person fleeing to avoid prosecution, custody, or confinement for a felony. This term also includes a person who is a fugitive by reason of violating a condition of probation or parole imposed for the commission of a felony. A person who has an outstanding warrant for a felony offense is considered to be a "fugitive felon" whether or not he/she is literally fleeing.

d. Dependent

For fugitive felons, a dependent includes a spouse, child, surviving spouse of an eligible Veteran or Servicemember or dependent parent of a Veteran.

3.04 Incarcerated Veterans

The Vocational Rehabilitation and Employment Officer (VREO) in every Regional Office (RO) must identify all incarcerated Veterans who are actively participating in the Chapter 31 program. The most common ways for a case manager to discover that a Veteran is incarcerated includes:

- The Veteran contacts the VR&E case manager and informs him/her of the incarceration.
- The Veteran's social worker/case manager contacts the VR&E case manager and informs him/her of the incarceration.

- The VR&E case manager discovers the information in Compensation and Pension Records Interchange (CAPRI) notes.
- The Veteran's family member or friend contacts the VR&E case manager and informs him/her of the incarceration.
- A Veterans Service Center (VSC) employee informs the VR&E case manager of the incarceration.
- The VR&E case manager performs an online search and discovers the Veteran is incarcerated.

3.05 Services and Assistance for Incarcerated Veterans

a. Types of Services and Assistance

Incarcerated Veterans may receive all of the services and assistance needed to succeed in his/her planned vocational rehabilitation program, to include vocational testing and evaluation; payment of tuition, fees, books, supplies; reader service; tutorial assistance; employment services; and any other educational expenses. Services are provided based on the Veteran's unique circumstances and the extent of services provided depends where he/she is currently being held and if he/she can be an active participant.

b. Paying Tuition and Fees for Incarcerated Veterans

The VR&E case manager must send VAF 21-4193, Notice to Department of Veteran Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, with a cover letter to the penal institution when information is needed to determine the nature of a Veteran's conviction, and amount of tuition and fees that the Veteran is responsible for paying (if an overpayment is applicable). The cover letter should provide the reasons why the information is needed. The VR&E case manager should use VAF 28-1905, Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification of Status, or VA ONCE to authorize tuition and fees for the incarcerated Veteran. The VR&E case manager can pay any portion of tuition or fees for an incarcerated Veteran that will not be reimbursed by programs other than VA.

See Appendix O, VA Forms, for information on how to access these forms.

c. Payment for Supplies and Other Training Expenses

Payments for other training expenses, such as supplies and books, are released only after the authorization for tuition and fees has been prepared.

d. Subsistence Allowance

Incarcerated Veterans are not eligible to receive subsistence allowance per 38 U.S.C. 3108(g)(1). If the Veteran has a running subsistence allowance award, the award must be suspended upon incarceration.

e. Employment Adjustment Allowance (EAA)

Incarcerated Veterans are not eligible to receive EAA. However, EAA is available to aid the Veteran in making a transition from training to employment when residing in a residential re-entry center, or participating in a work-release program.

3.06 Fugitive Felon Veterans

A Veteran who is eligible for VR&E benefits may not receive benefits for any period during which he/she is a fugitive felon. The VREO or designee will coordinate with VR&E Service and take action necessary to terminate the Veteran's benefits per 38 U.S.C. 5313.

a. VA Office of the Inspector General (OIG)

The VA Office of the Inspector General (OIG) has primary responsibility for implementation of the Fugitive Felon provisions of section 505 of Pub. L. 107-103. The OIG identifies VA beneficiaries who may be fugitive felons by matching lists of fugitives from federal and state law enforcement authorities to VA records. When a match is identified, OIG notifies the law enforcement agency and provides that agency with information about the Veteran. The OIG matches these lists using information that identifies the Veteran to include the following:

- Name
- Social Security Number (SSN)
- Date of birth

When the OIG identifies a matched record, the OIG will refer specific information about the Veteran to the law enforcement agency with the pending warrant. The OIG holds any referral to other VA elements for 60 days. This allows the law enforcement agency time to apprehend the beneficiary.

At the end of the 60-day waiting period, OIG refers the case to all VA elements providing benefits to the Veteran. This referral includes VR&E Service if the Veteran has a VR&E record. VR&E Service screens the referral

before forwarding it to the RO where the Veteran is receiving benefits for possible award adjustment action.

If the Veteran is receiving subsistence allowance during the 60-day waiting period and it is determined after that time that he/she is a fugitive felon, the VRC will send the fugitive felon a stop payment letter, which may cause an overpayment. The fugitive felon may request a waiver by sending a completed and signed VAF 5655, Financial Status Report, and letter justifying the waiver to:

US Department of Veterans Affairs
Debt Management Center
P.O. Box 11930
St. Paul, MN 55111

OIG makes one referral for each warrant for every Veteran that potentially needs benefits adjusted under this provision of law. Beneficiaries of fugitive felons may not receive any benefits while the Veteran is in a fugitive felon status.

b. Regional Office Actions

Upon receiving a referral from VR&E Service and before discontinuing benefits to a Veteran identified as a fugitive felon, a RO employee must verify the information in the Benefits Delivery Network (BDN), as well as Share.

1. BDN Verification

To verify in BDN, the RO employee must compare the individual's complete name, SSN, and date of birth on the Beneficiary Inquiry (BINQ) screen.

2. Share Verification

To verify information in Share, the RO employee must complete the following steps:

- Corporate Inquires, then
- PreConvsn Master Rcd, then
- Monthly Income & Misc M15 screen, then
- Incarceration Ind (indicates whether the Veteran is incarcerated)

3. Required Actions

If the information on the OIG referral matches the BDN information, then the RO employee can assume the OIG referral is correct and correctly identifies the proper individual, and determine the period the fugitive felon is not entitled to VR&E benefits.

If the information on the OIG referral matches only some of the BDN information, then the RO employee must send an email with detailed information on all discrepancies to VR&E Service corporate mailbox.

The VREO serves as the RO primary Point of Contact (POC) for handling referrals. The VREO should select an alternate POC in his/her absence. The POC and alternate POC must have sensitive access levels at level 7 for BDN and Corporate WINRS (CWINRS).

The RO having jurisdiction over the Veteran's Chapter 31 records as shown in Beneficiary Identification and Record Locator Subsystem (BIRLS) processes the cases referred by the OIG. If the Veteran's record has been transferred to a different RO, the referral must be transferred to that RO.

When the RO receives a referral, the POC determines if VR&E benefits need to be adjusted. If a Veteran's VR&E benefits do not need to be adjusted (no benefits paid during the period the warrant was outstanding, with no entitlement remaining, or delimiting date in the past), the POC does not give the Veteran due process per see 38 CFR 3.103.

If a Veteran's benefits do not have to be adjusted (no VR&E benefits paid during the period the warrant was outstanding), but he/she is eligible for VR&E benefits in the future, the POC should advise the Veteran that he/she is entitled to future benefits.

If a Veteran's VR&E benefits need to be adjusted (VR&E benefits paid during the period the warrant was outstanding), the POC must first provide him/her with due process. Sample letters are located in Appendix AK, Fugitive Felon Sample Letters.

After the due process time limit, the POC must adjust the Veteran's VR&E benefits. After adjusting the Veteran's VR&E benefits, the POC must notify the OIG of the action taken on the referral.

This provision of law pertains to all aspects of VA benefits. These benefits include Compensation, Pension, Loan Guaranty, VR&E, Insurance, Education, hospitalization and other associated medical assistance. The

POCs must, when appropriate, coordinate with OIG to obtain information or evidence to resolve the referrals.

c. Benefits Delivery Network Records

1. Accessing BDN Records

The POC must take the following actions to access the BDN records of each individual identified on the OIG referral worksheet:

- Process a BINQ to ensure that the person the OIG has identified is the same person as in the BDN database.
- For Veterans and transfer cases, review the BIRLS Veteran Identification, Location (LOC), and Miscellaneous (MSC) screens.
- Process a MINQ (Master Record Inquiry) M32 for the Chapter 31 database.

2. Capture of BDN Screens

The POC must review appropriate screens so that the Veteran's information can be compared with the information in the OIG referral. If the screens reflect that the Veteran's information is the same as in the OIG referral, the POC does not have to print or capture those screens. If the screens reflect that the Veteran's information is not the same as in the OIG referral, the POC should capture those screens and forward them to his/her area liaison in VR&E Service. The VR&E Service liaison will compare them to the OIG's referral worksheet to determine if the person referred is a Veteran currently participating in the Chapter 31 program and whether or not that Veteran has been incarcerated.

If these screens are not captured, the POC should make a note in CWINRS that he/she reviewed the screens, stating the specific screens reviewed, and that no action is required.

The POC must review appropriate BDN screens to determine if the Veteran had received benefits during the period in question. If the Veteran had received benefits, and his/her award must be adjusted, capture the screens reviewed.

3. Review of BDN Records

The POC must review the BDN records of each individual identified on the OIG referral worksheet by taking the following actions:

- In cases where all BDN information matches the OIG information, assume the OIG referral is correct and correctly identifies the proper individual.
- In cases where most of the BDN information matches the OIG information, also assume the OIG referral is correct and correctly identifies the proper individual.
- In cases where some of the BDN information does not match the OIG information, do not automatically assume the referral information is correct and correctly identifies the proper individual. The POC will send an email with detailed information on all discrepancies to the VR&E Service liaison. VR&E Service will coordinate with the OIG to resolve the discrepancies before continuing the case.

POCs can encounter cases where identity theft is present. If there is some indication showing that the Veteran's identity has been compromised, contact the OIG. If the OIG determines that the Veteran is a victim of identity theft or fraud, the OIG will notify the POC to disregard that referral. If the POC had already sent the beneficiary the appropriate due process letter, send the person a letter notifying him/her to disregard the letter and notate in CWINRS. The POC needs to inform the Veteran of the notification from OIG that he/she is a victim of identity theft or fraud and to contact his/her banking institution(s) to ensure proper steps are taken to protect him/her from further impact.

d. OIG Referrals

Initially, the OIG refers cases to VR&E Service, and VR&E Service reviews the OIG referral and forwards it to the RO for action. The OIG refers cases using a referral worksheet. This referral worksheet is designated OIG Form FFP-3, Investigative Summary.

One individual can have several outstanding felony warrants. When reviewing OIG information, pay particular attention to the warrant number, date, and referring agency. POCs should only consider the specific warrant on the OIG referral. If other warrants are appropriate, OIG will make a separate referral for each appropriate warrant.

e. Completion of OIG Form FFP-3, Investigative Summary

As part of the initial OIG referral, OIG submits OIG Form FFP-3 to VR&E Service, and VR&E Service forwards the form to the VR&E Division. FFP-3 consists of three sections.

1. Top one third contains the following information:

Warrant Information	Content
Warrant Date	The date of the outstanding warrant(s).
Warrant Number	The reference number(s) assigned by the law enforcement agency for the outstanding warrant(s).
Warrant Agency Information	The name, address, and telephone number of the law enforcement agency(ies).
Offense	The felony for which the warrant was issued by the law enforcement agency.
Fugitive Information	The following information on the individual named on the warrant: <ul style="list-style-type: none"> • First name • Middle initial, when applicable • Last name • Gender • SSN • Date of birth

2. Middle one third contains the following information:

Investigative OIG Summary Information	Content
Arrest Information	The date that the fugitive felon was apprehended, and the name of the facility or custodian of the fugitive felon.
Warrant Validation Information	Indicates whether or not the warrant is still valid.
Extradition Information	Indicates whether or not the fugitive felon will be extradited.

3. Bottom one third contains the following information:

VA Identification Information	Content
Source Information	This section contains the source of the VA records used to retrieve matching information. These include, but are not limited to BDN and VA medical center records.

Address Information	The mailing address of the fugitive felon.
VA Contact Information	The VR&E Service corporate mailbox.

The law enforcement agency with jurisdiction over the warrant can choose to whether or not to extradite the Veteran. To determine whether the law enforcement agency will or will not extradite the fugitive felon, the POC must have the Veteran contact the law enforcement agency using the information found on the top part of the FFP-3, and have if the agency will extradite from a local jurisdiction.

If the law enforcement agency having jurisdiction over the warrant is willing to pay for the extradition, then the fugitive felon can surrender to local officials. If the agency is not willing to pay for extradition, then the fugitive felon must return at his/her expense and surrender to the agency in order to clear the warrant.

f. Fugitive Felons Not Eligible for Vocational Rehabilitation Benefits

The POC must review the Veteran's vocational rehabilitation records and employment records and determine if he/she received VR&E benefits during the period in question. The period in which the Veteran was a fugitive felon begins on the latest of the two dates:

- The date of the warrant. This date is shown on OIG FFP-3.
- The date of the law, December 27, 2001.

The Veteran is no longer considered a fugitive felon effective the date the warrant is cleared. The date the warrant is cleared is usually the date the person is arrested. However, the date the warrant is cleared can also be the date that the warrant is administratively cleared, meaning cleared without the person being arrested. This date is known as the "Warrant Invalid Date." If the warrant is cleared, the OIG FFP-3 worksheet should show an entry in "Arrest Date" or "Warrant Invalid Date". This date does not have to be on the OIG form. Some warrants are never cleared. If the date is on this form, the person may continue to receive benefits from that date forward. If this date is not on the form, and there is no ending date, the fugitive felon is not eligible for VR&E benefits as of the date of the law, December 27, 2001.

When there is no ending date on the OIG form, the OIG will notify the POC if the Veteran is arrested at a later time or the warrant is administratively cleared at a later time. This OIG notification will include the date of arrest or

clearance. The VREO will accept notification and restore vocational rehabilitation and employment benefits, if payable, from that date.

g. Identification of Vocational Rehabilitation and Employment Benefits

The POC must review the Veteran's VR&E records and then determine if any benefits were received during the period when the warrant was outstanding.

If the Veteran has not received VR&E benefits during this period, but had received them before it, and could receive them afterwards (has remaining entitlement and a future delimiting date), take the following actions:

- Prepare a note in CWINRS to show that the Veteran is not eligible for VR&E benefits due to the fugitive felon provision of Pub. L. 107-103. Enter the effective date from which the beneficiary is not eligible for VR&E benefits.
- Send the Veteran a letter notifying him/her that he/she will not be eligible for future vocational rehabilitation benefits until the warrant is cleared (see Appendix AK, Fugitive Felon Sample Letters).

If the Veteran has not received VR&E benefits during the period of ineligibility and could not receive them afterwards (has no remaining entitlement and a past delimiting date), annotate his/her records, but do not take any additional actions.

If the Veteran has received VR&E benefits during the period of ineligibility, take the actions shown in subsequent paragraphs.

h. Due Process

1. Due Process Required Before Award Adjustment

Each individual identified on the referral worksheet and subsequently determined by the POC to not be eligible for VR&E benefits because of the fugitive felon provision of Pub. L. 107-103 must receive appropriate due process before the POC adjusts his/her benefits. Due process must include the proposed decision to stop vocational rehabilitation benefits, the reasons for the action, the right to a hearing, and the right of representation. Do not discontinue any Chapter 31 benefits for 60 days as required by due process guidelines.

2. Information from Veteran Received Within 60-Day Limit Before Award Adjustment

In general, a Veteran has to submit evidence showing that he/she is no longer in fugitive status. This evidence must originate with an official source at some level of government. The POC cannot accept uncorroborated statements by the Veteran, a family member or a private attorney. If there are questions about whether the Veteran remains in fugitive status, the POC must contact the law enforcement agency that appears on the referral worksheet. The Veteran may submit the following evidence:

- Official Documentation

Official documentation is usually either a court document or a letter on official stationery from a law enforcement agency. The POC can accept this official documentation as primary evidence showing that the individual is no longer in fugitive felon status.

- Unofficial Documentation

A Veteran can submit the contact information for an official who can verify that the Veteran is no longer in fugitive felon status. These are usually law enforcement or law related officials, such as a parole officer, who can verify the status of the individual.

The POC must verify all unofficial documentation by contacting the law enforcement agency listed on the referral. Explain what information has been received, referring to the specific warrant shown in the OIG referral worksheet. If the law enforcement agency confirms that the individual is no longer in fugitive felon status, document this information in a CWINRS note or VAF 119, Report of Contact. See Appendix O, VA Forms, for information on how to access this VAF.

If the POC is not able to contact the official, he/she must prepare a letter advising the Veteran of this fact and stating that benefits cannot be resumed until proof is received showing that he/she is no longer in fugitive felon status. If the POC contacts the official, but the official is unwilling to release the information, the POC can get assistance from the VA OIG Field Office that handles the state for the Veteran's mailing address.

If the Veteran states that he/she has already submitted this information or evidence as part of a different benefit under this provision of law, such as compensation and/or healthcare benefits,

then the POC must send these details via email to VR&E Service. VR&E Service will obtain OIG guidance for these cases. If the OIG has information that the person has been arrested or the warrant has been cleared, the OIG will notify the POC of this information.

i. Award Adjustment Actions and Termination of Benefits

After 60 days, the POC must adjust the Veteran's award if he/she received Chapter 31 subsistence allowance during the period the warrant was outstanding. The POC must defer adjustment action if the Veteran has requested a hearing.

The POC must terminate a Veteran's subsistence allowance while the Veteran is in fugitive felon status and send the Veteran a letter notifying him/her that benefits have been terminated (see Appendix AK, Fugitive Felon Sample Letters). The earliest date that subsistence allowance can be terminated is December 27, 2001, the effective date of the law.

POCs can reinstate a beneficiary's vocational rehabilitation benefits effective the date that he/she is arrested or is no longer in a fugitive status. If the date that the identified felon is no longer in a fugitive status is not available from an official source, POCs should terminate benefits and cite the termination reason per 38 U.S.C. 5313.

There is no provision for extending a Veteran's VR&E benefits by the length of time that he/she was not eligible to receive them under the fugitive felon provision of Pub. L. 107-103.

j. Completion of OIG Form FFP-4, Feedback Form

As part of the initial OIG referral, OIG submits OIG Form FFP-4, Feedback Form, to VR&E Service. VR&E Service forwards the form to the VR&E Division. FFP-4 consists of two pages. The first page contains the same identification information as form FFP-3. POCs do not have to complete any information on page 1 or the top half of page 2. The bottom half of page 2 contains the blocks the POC must complete:

FFP-4 Block Heading	Action
Action Taken	<ul style="list-style-type: none"> • If VR&E benefits have been terminated, place an "X" in the Benefit Terminated block. • If an overpayment has been created, place an "X" in the Will Attempt to Recover block. • If no action is necessary under the provision of PL 107-103, place an "X" in the No Action block.

Types of Benefits Affected	If VR&E benefits are terminated, place "Chapter 31" in this block.
Transfer Office/Transfer Date	If the referral originated at another RO place the name and number of this RO and the date that the referral was made to the RO with current jurisdiction in this block.
Date Action Taken	If benefits were terminated, place the date of the award authorization in this block.
Reason No Action Taken	If no action was taken, place an "X" in this block and state why no action was taken.
Monthly Benefit Withheld	If a Chapter 31 debt has been created and is being recouped by a current subsistence award, place the amount of the monthly payment withheld in this block.
Overpayment (VBA)	If a Chapter 31 debt has been created and is not being recouped by a current subsistence award, place the amount of the debt in this block.
Cost Avoidance	If a Chapter 31 debt has been created, multiply the monthly rate by the number of months beginning from the Date Last Paid (DLP) to the earlier of either <ul style="list-style-type: none"> • The date that benefits are resumed, or • The end of the fiscal year during which the termination was authorized. Put the calculated amount in this block.

k. Time Limit to Return the Completed FFP-4

POCs must finalize each referral within 120 days after receiving it and return the FFP-4 to VR&E Service.

l. Lifting the Ban on Benefits for a Fugitive Felon

Once the warrant is cleared, the Veteran may resume eligibility, and the case manager may restore Chapter 31 benefits. To resume benefits:

- Enter a note in CWINRS that states the Veteran is again eligible for Chapter 31 benefits, and the effective date (the date the warrant is cleared). If the Veteran's Chapter 31 record has been discontinued, a new GED will be required.
- When appropriate, initiate a new subsistence allowance award. The VRC must ensure that the effective date for the resumption of the subsistence allowance is correct.