



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Combat-Related Special Compensation & Concurrent Retirement and Disability Pay

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Presentation Overview

1. Introduction to National Veterans Legal Services Program (NVLSP), Lawyers Serving Warriors®
2. Overview of Combat-Related Special Compensation (CRSC) and Concurrent Retirement and Disability Pay (CRDP)
3. Categories of CRSC
4. Tips for CRSC Advocacy and Evidence Evaluation
5. Questions/Conclusion

National Veterans Legal Services Program

NVLSP is a nonprofit org. formed in 1981. We work to ensure that our nation's disabled veterans, service members, and survivors receive the benefits to which they are entitled.

- **What We Do:**

- Individual Attorney Representation and Class Action Lawsuits
 - Screen all TDVS BVA decisions for possible appeal to CAVC
 - Offer free attorney for qualifying cases
- Training & Mentoring of Veterans Advocates
- Publication of Training Materials- Including the *Veterans Benefits Manual*
- Lawyers Serving Warriors®



NVLSP: Lawyers Serving Warriors® (LSW)

Lawyers Serving Warriors® is NVLSP's pro bono project that provides **free** legal assistance through a network of volunteer attorneys to veterans on various issues.



NVLSP: Lawyers Serving Warriors® (LSW) Process

- A veteran applies to LSW for free legal assistance with his or her claim.
- LSW then requests the veteran's medical and military personnel records in order to evaluate the veteran's case.
- LSW staff attorneys review the veteran's application to determine whether it fits our criteria and place eligible cases with volunteer law firm/corporate counsel attorneys, mentoring the volunteers.



NVLSP: Lawyers Serving Warriors® (LSW) Process

- Discharge Upgrades
- Military Medical Retirement Claims and Appeals
- Applications for Combat-Related Special Compensation
- Military Sexual Trauma claims
- BVA appeals on remand from CAVC



Overview of Combat-Related Special Compensation (CRSC) and Concurrent Retirement and Disability Pay (CRDP)

Why Do We Need CRSC and CRDP?

Statutory Bar to “Concurrent Receipt”

38 U.S.C. § 5304(a)

- Generally, veterans are barred from receiving, in any particular month, both
 - (1) the full amount of military retirement pay; and
 - (2) the full amount of VA disability compensation benefits.

Veterans Entitled to Both Payments

- Veterans entitled to both military retirement pay and VA disability compensation are generally required to waive all or part of one agency's monetary benefits, so that total payment received = the highest of the two entitlement amounts.
- Example: GI Joe is eligible to receive \$800 in retirement pay and \$1000 in VA disability compensation. Veteran would likely waive \$800 in retirement pay to receive the larger VA payment of \$1000.

Benefits for Military Retirees

- Combat-Related Special Compensation (CRSC)
 - Retirement based on years of service, or disability
 - Partial restoration of military retirement pay
 - Tax-free
- Concurrent Retirement and Disability Pay (CRDP)
 - A years of service retirement, and combined VA disability rating of at least 50%
 - Full restoration of military retirement pay
 - Taxable

What is CRSC?

- CRSC is an extra payment that is in addition to any military disability retirement pay and/or VA disability compensation that the veteran may be receiving each month.
- CRSC is a **tax-free** monthly payment provided by the Department of Defense, that is available to eligible veterans who have injuries that are combat-related, as defined by law.

Authorities for CRSC

- **Statutory Authority:** 10 U.S.C. § 1413a
 - Enacted 2002 – limited eligibility to 20-year retirees.
 - January 2008 – amended to make medically retired veterans (no matter when they were discharged) eligible for CRSC.
- **DOD Authority:** CRSC Program Guidance 2004 and 2008; Financial Management Regulation, Volume 7B, Chapter 63.

What Types of Injuries/Conditions are Eligible for CRSC?

- Injuries/conditions that are service-connected by VA with a disability rating of at least 10%.
- If ratings increase, CRSC payments may increase.
- Injuries/conditions that are service connected at 0% are eligible for payments if the rating is subsequently increased.



Who is Eligible for CRSC?

The primary eligibility requirement for CRSC is that the individual must have been retired from the military either due to years of service or disability.



Military Medical Retirement

- Medical or disability retirement requires service-connected medical condition(s) severe enough to interfere with the proper performance of one's military duties and that injury is rated at 30% or more.
- In order to be retired, a service member must be found unfit for military duty by a PEB in the IDES process.
- May be multiple impairments, physical and/or mental, with total rating at 30% or more.



Military Medical Retirement

- NVLSP's Lawyers Serving Warriors® assists veterans seeking a military medical retirement post-discharge with applications to the Boards for Correction of Military/Naval Records and/or courts
- To learn more or apply, go to <https://www.nvlsp.org/what-we-do/lawyers-serving-warriors/>



Years of Service Retirement

- A service member can be retired from active service due to having served on active duty for at least 20 years or more.
- A service member may also be retired due to years of service if they were retired under the Temporary Early Retirement Act.

Years of Service Retirement

- Service member can be retired from Reserve/National Guard service due to having served at least 20 or more years in the Reserve/National Guard
- While a Vet may receive a “20-year letter” confirming 20 or more years of service in the Reserve/National Guard, Vet will likely not be able to receive retirement benefits until he/she reaches the age of 60. As a result, a Vet with a years-of-service retirement from the Reserve/National Guard will not be eligible to apply for CRSC until their retirement benefits begin after turning 60, or possibly sooner depending on the number of years of active service.

What is CRDP?

- CRDP allows veterans to receive the full amount of their VA disability compensation and military retired pay.
- CRDP is **taxable** in the same manner as military retirement pay.
- A veteran cannot receive both CRSC and CRDP.
- A veteran who is entitled to both will be allowed to choose whether to receive CRSC or CRDP by the DFAS.

Authorities for CRDP

- **Statutory Authority:** 10 U.S.C. § 1414
 - Jan. 2004: began phase-in period
 - Dec. 2005: phase-in period ended for military retirees with a 100% VA disability rating
 - Dec. 2013: phase-in period ended for military retirees with combined VA disability ratings of 50% to 90%
- **DOD Authority:** Financial Management Regulation, Volume 7B, Chapter 64.

Who is eligible for CRDP?

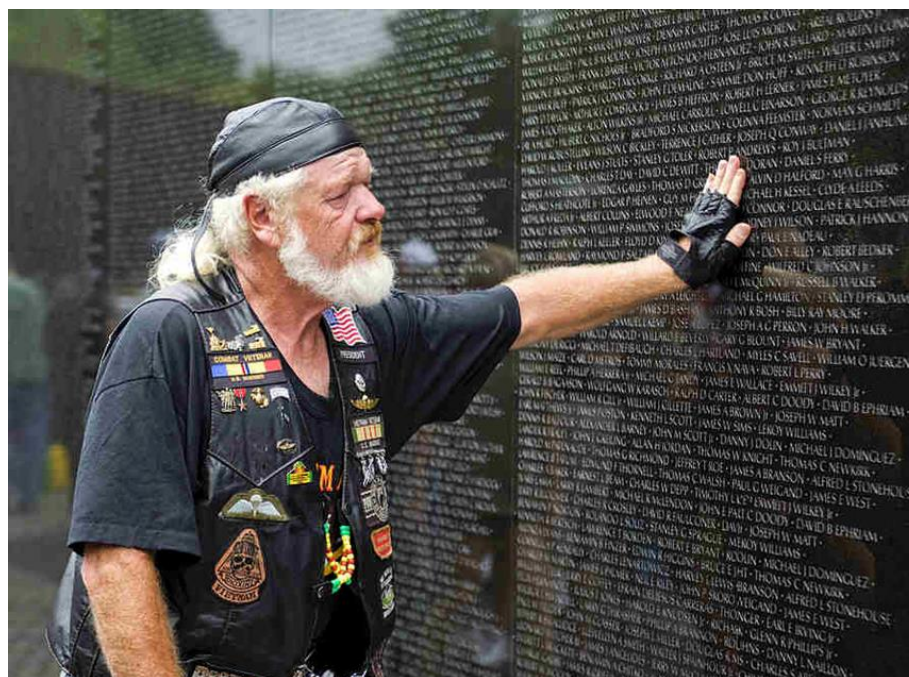
- CRDP is generally available to Vets who have:
 1. A years of service retirement, and
 2. A combined VA disability rating of 50% or higher.
- Vets who are medically retired and have at least 20 years of service may also be eligible for CRDP

How to apply for CRDP?

- **No application** is needed to receive CRDP
- The effective date and amount of CRDP is determined by DFAS



Categories of CRSC



What Makes an Injury/Condition Combat-Related?

- Under 10 U.S.C. § 1413a, the primary categories of combat-related disabilities eligible for CRSC are:
 1. Injuries incurred as a direct result of armed conflict
 2. Injuries incurred through an instrumentality of war
 3. Injuries incurred in the performance of duty under conditions simulating war
 4. Injuries incurred while engaged in hazardous service
 5. Injuries for which the member was awarded the Purple Heart

Direct Result of Armed Conflict

- Any action in which service members are engaged with hostile or belligerent forces.
- Must be a causal relationship between the armed conflict and the disability.



Direct Result of Armed Conflict

- Examples:
 - Injury from exploding IED
 - Injured from an aircraft being shot down
- Injuries not approved for CRSC include twisting an ankle while stepping in a hole in a combat zone, but not while engaging with the enemy.

Combat-Related Mental Health Conditions



- PTSD is a mental disorder caused by traumatic experiences (called a “stressor”)
- PTSD is diagnosed by medical professionals based on the stressors experienced by the patient
- A diagnosis of PTSD is an affirmation by the medical professional that the patient experienced stressors that caused PTSD
- Combat stressors may lead to other mental health conditions, such as anxiety or depression

Armed Conflict PTSD Success Story

- An Army Staff Sergeant deployed to Iraq three times as an Infantryman in heavy combat areas.
- He raided target houses and was repeatedly exposed to small arms fire, heavy artillery fire, and explosives.
- He suffered from nightmares of traumatic events, intrusive memories, and emotional numbing.
- He was diagnosed with PTSD.
- Vet received CRSC under the Armed Conflict category for PTSD.

Instrumentality of War

- An instrumentality of war includes a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury.
- This category includes wounds caused by a military weapons, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material.



Instrumentality of War

- This category may also include instrumentalities not designed primarily for military service, if the use of the instrumentality subjects the individual to a hazard peculiar to military service.
 - Example: Assault with a shovel.
- There must be a causal relationship between the instrumentality of war and the disability

Instrumentality of War

- Examples:
 - Hand crushed by armored vehicle hatch
 - Injured by shrapnel on grenade range
- Injuries not approved for CRSC include hand crushed while operating a fork lift in a combat zone.

Instrumentality of War Success Story

- Service member served in the Army and Air Force as a Wheeled Vehicle Mechanic, deploying to Iraq and Afghanistan.
- While pushing a Humvee backward in training, it rolled over his leg, injuring his foot and ankle.
- Other soldiers had to push the Humvee off his leg.
- Vet received CRSC under the Instrumentality of War category for foot and ankle conditions

Conditions Simulating War

- Disabilities resulting from military training, such as war games, airborne operations, grenade and live fire weapons practice, and hand-to-hand combat training.
- Does not include physical training activities, such as calisthenics, jogging, or recreational sports activities.



Conditions Simulating War

- Examples:
 - Injured while performing combatives training
 - Injured during a combat vehicle rollover training exercise
- Injuries not approved for CRSC include physical or mental injuries incurred during a training exercise that is not simulating war.

Simulating War Success Story

- In prep for deployment to Iraq, an Army Captain participated in live fire vehicular training.
- The vehicle hit a ditch and he was pinned against the vehicle by another soldier, with the magazine of a firearm protruding into his back.
- He suffered a slipped disc which led to disc disease and radiculopathy.
- The Officer received CRSC under Conditions Simulating War for his disc disease and radiculopathy.

Hazardous Service

- Such service includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty.
- The injury or disease must be the direct result of actions taken in the performance of such service.



Hazardous Service

- Example:
 - Injured knee while performing airborne or parachute duties
- Injuries not approved for CRSC under this category are those that were incurred in a combat zone, but not tied to a specific event from combat.
 - Serving in a combat zone alone does not qualify as hazardous service for CRSC.

Hazardous Service Success Story

- An Airman worked in prisons performing detainee operations in Afghanistan.
- He encountered volatile situations during riots and entering locked areas with enemy combatants.
- He later experienced anxiety with panic attacks and nightmares and was diagnosed with PTSD.
- The veteran received CRSC under the Hazardous Service category for PTSD.

Purple Heart Disabilities

- The Purple Heart is awarded to service members who are wounded or killed as a result of armed conflict
- Need sufficient causal relationship between the disability and the injury for which a Purple Heart was awarded.



Combat-Related Presumptive Conditions

- **Conditions that automatically qualify as Combat-Related:**

Presumptive Conditions

- Agent Orange Exposure (Vietnam)
- Chronic Disabilities from Persian Gulf War
- VA rating decision must indicate that the disability is based on one of these statutory presumptions.

Exposure to Burn Pits

- On military bases in Iraq and Afghanistan, garbage disposal was done by dumping trash, medical waste, asbestos, and other chemicals into a burn pit. The trash was then lit on fire with jet fuel.
- Service members who were deployed to the Middle East were exposed to smoke, fumes, and gases from the burn pits.
- Many of those service members have now developed respiratory illnesses and some rare forms of cancer that are now being tied to exposure to burn pits.

Burn Pits and CRSC

- More Vets are applying to LSW for assistance with CRSC cases involving burn pits.
- Air Force veteran who served as a fighter pilot stationed at Balad Air Base in Iraq. Smoke from the burn pits would enter the cockpit while the Vet was preparing for a mission.
- Vet is now diagnosed with constructive bronchitis.
- Developing arguments as to why CRSC should be awarded for Vet's bronchitis as an instrumentality of war, armed conflict, or extrahazardous service.

Burn Pits and CRSC

- In Sept. 2020, legislation was introduced in Congress called “Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act of 2020.”
- This legislation, if passed, would provide a presumption of service connection from the VA for certain diseases associated with the exposure of toxins.
- This would likely cause DoD to create a similar presumption for CRSC.

Combat-Related Secondary Conditions

- **Secondary Condition: A condition that VA has service-connected based on a finding that it was caused by or aggravated by another VA service-connected disability (primary condition)**
 - Ex: Muscle damage of calf due to bullet wound (primary condition) results in knee instability (secondary condition)
 - For a secondary condition to qualify for CRSC, the primary condition must be combat-related under one of the six categories of disabilities eligible for CRSC (Armed Conflict, Through an Instrumentality of War, Hazardous Service, Under Conditions Simulating War, Purple Heart Disabilities, or Presumptive Conditions)
- If primary condition is combat-related, the secondary condition is automatically combat-related.

CRSC Application

| CLAIM FOR COMPENSATION RELATED SPECIAL COMPENSATION (CRSC) | | | | | | | | | | | | | |
|--|---|--------------|---------------------|---|--|-------------------------------|-----------------------|---|--|-------------------|----------------------------------|--|---|
| PROGRAM NAME & NUMBER | | | | | | | | | | | | | |
| <p>DESCRIPTION: (U.S.): Code Section 116(a) Civil Financial Management Population, Income (U.S. Code Title 38, 116(a) (1)(B)).</p> <p>PROBABLE INTERESTS: Used by military veterans to submit a claim through the appropriate authority under the United States Special Compensation (CRSC). Claim is reviewed and determined eligible for benefits, and determines the amount and effective date of payment.</p> <p>SCOPE: (CRSC). Information is provided to individuals authorized to receive relief and available payments on behalf of veterans or beneficiaries.</p> <p>DISCLAIMER: Voluntary release of information may result in disclosure being considered eligible for release.</p> | | | | | | | | | | | | | |
| GENERAL INSTRUCTIONS | | | | | | | | | | | | | |
| <p>To submit a valid claim you must complete the ENTIRE FORM and PROVIDE ALL INFORMATION (Section of Page 2) through claim forms without exception.</p> <p>Complete and submit this form to the appropriate authority. If you do not have the correct order "Don't Know" or "DK". Do not leave any field blank. This form identifies the information that you are sharing.</p> <p>It is your responsibility to include supporting documents to complete a government benefit, as stated on the page of information necessary to verify benefits.</p> <p>If you need assistance completing this form, contact with the agency from which provided or another agency or organization: Army: http://www.army.mil Navy: http://www.navy.mil Air Force: http://www.af.mil DOD: http://www.dod.mil DoD: http://www.dod.mil DoD: http://www.dod.mil</p> <p>Sign and date your claim. Contact with your claim or discharge case if any supporting documents listed on page 2. Mail your claim to the address listed below for the different services from which you retired.</p> <p>DO NOT SIGN ANY INFORMATION FROM OTHERS, AS THEY MAY NOT BE AUTHORIZED.</p> <p>Send your claim to the address listed below for the different services from which you retired.</p> <table border="0"> <tr> <td>ARMY:</td> <td>COAST GUARD:</td> </tr> <tr> <td>Department of the Army Army Human Resources Command ATTN: Claims, 1100 1100 Amphibious Expeditionary, Dept. 800 Fort Belvoir, 617 8000 AFHQ 1 402-413-4000</td> <td>Commander (PDC-PCSCA) Personnel Service Center c/o Coast Guard Unit 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100</td> </tr> <tr> <td>NAVY AND MARINE CORPS:</td> <td>RESERVE CORPS:</td> </tr> <tr> <td>Secretary of the Navy Office of Personnel Service ATTN: Special Reserve Service Compensation Branch 1100 Military Personnel, Suite 1100 Washington Navy Yard, DC 20374-1100</td> <td>Director, Compensation Personnel Center 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100</td> </tr> <tr> <td>AIR FORCE:</td> <td>POST-RETIREMENT BENEFITS:</td> </tr> <tr> <td>United States Air Force Compensation Management 1100 Military Personnel, Suite 1100 Washington Navy Yard, DC 20374-1100</td> <td>United States Public Health Service Compensation Branch Personnel Service Center, 1100 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100</td> </tr> </table> | | ARMY: | COAST GUARD: | Department of the Army Army Human Resources Command ATTN: Claims, 1100 1100 Amphibious Expeditionary, Dept. 800 Fort Belvoir, 617 8000 AFHQ 1 402-413-4000 | Commander (PDC-PCSCA) Personnel Service Center c/o Coast Guard Unit 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100 | NAVY AND MARINE CORPS: | RESERVE CORPS: | Secretary of the Navy Office of Personnel Service ATTN: Special Reserve Service Compensation Branch 1100 Military Personnel, Suite 1100 Washington Navy Yard, DC 20374-1100 | Director, Compensation Personnel Center 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100 | AIR FORCE: | POST-RETIREMENT BENEFITS: | United States Air Force Compensation Management 1100 Military Personnel, Suite 1100 Washington Navy Yard, DC 20374-1100 | United States Public Health Service Compensation Branch Personnel Service Center, 1100 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100 |
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| AIR FORCE: | POST-RETIREMENT BENEFITS: | | | | | | | | | | | | |
| United States Air Force Compensation Management 1100 Military Personnel, Suite 1100 Washington Navy Yard, DC 20374-1100 | United States Public Health Service Compensation Branch Personnel Service Center, 1100 1000 Military Personnel, Suite 1100 Annapolis, MD 20740-1100 | | | | | | | | | | | | |
| (2017) FORM 1000, JAN. 2017 | PROGRAM NUMBER: 11000000 (11000000, 11000000) | | | | | | | | | | | | |
| Service Program Form (11000000) | | | | | | | | | | | | | |

How to Apply for CRSC?

- Complete a CRSC application (DD Form 2860)
- CRSC application must be filed with the service branch that retired the veteran.
- In addition to the CRSC application, the applicant should submit any medical records, award citations, lay statements, or any other evidence that supports that an injury was combat-related for CRSC purposes.

Applying for CRSC

“Cover sheet” of application:

- **GENERAL INSTRUCTIONS** – “It is your responsibility to provide supporting documents from personal or government records, so make sure you supply all documentation necessary to verify this claim.”
- CRSC application decided solely on documents attached to application.
- CSRC adjudicators will not obtain any records from DOD or VA.

Tips for CRSC Advocacy

- The key to a successful CRSC application is to include all relevant evidence that supports a combat-related determination for each combat-related disability.



Tips for CRSC Advocacy

- Step 1: Identify potential CRSC disabilities by determining which disabilities are service-connected by VA.
 - Identify all VA rating decisions by reviewing the entire VA claims file.
 - Identify the most recent rating decision. Check with your client to verify that he/she has not received a more recent rating decision than the latest decision within the VA claims file.
 - From the most recent rating decision, identify all service-connected disabilities (review the rating decision's codesheet).

Tips for CRSC Advocacy

- Step 2: Review the VA claims file and any other client documents for information that supports a combat-related determination for any of the disabilities identified by Step 1.
- Step 3: Complete a CRSC Application (DD Form 2860)
- Step 4: Draft a supporting statement or letter addressing each combat-related disability, with supporting documents attached as exhibits (attach brief to CRSC Application)

Tips for Evidence Evaluation

- Helpful Statements to Support a Claim: When reviewing your client's VA and military records, look for phrases that tell "how" an injury/condition was incurred or aggravated.
- For example:
 - "injury is more likely than not caused by airborne duty, FTX, IED explosion, or specific instrument of war while training"
 - "hurt knee or shoulder during an airborne jump, with bad landing"
 - "hearing loss caused by acoustic trauma"
 - "hatch cover hit head during training"
 - " shot in the leg by enemy in Iraq"

Tips for Evidence Evaluation

Key Documents to Support CRSC Claim

- Purple Heart Certificate/Orders
- DD Form 214
- VA Rating Decisions
- PEB Findings
- MEB Narrative Summary
- Medical Records

CRSC Appeals Process

- CRSC Reconsideration
- Appeal to the BCMR (Army, Air Force, Coast Guard) or BCNR (Navy, Marine Corp.)
- Appeal to Court of Federal Claims if within 6 years of first denial.
- Appeal to US District Court if more than 6 years from initial denial and procedural error.

NVLSP can assist with CRSC appeals at all levels

CRSC Appeal Success Story

- LSW represented an Army veteran who had been denied CRSC, filing an appeal at the Court of Federal Claims.
- Vet suffered physical injuries when he was involved in an accident while driving a 5-ton military vehicle to a field training exercise.
- Following a remand from the Court, Vet was awarded \$383/month in prospective CRSC benefits and a retroactive award of approximately \$41,000.

Effective Dates for CRSC Awards

Effective date for a CRSC award will be the later in time between the following 3 dates:

1. The effective date of the VA disability compensation award for a combat-related disability or disabilities.
2. The date the veteran was retired from a military service branch.
3. The effective date of the law that created entitlement to a CRSC award for that retiree.

Retroactive CRSC Payment

- Vet may be entitled to a retroactive CRSC payment depending on the effective date of the CRSC award.
- DoD has restricted retroactive payments to six years for applicants who file a CRSC claim more than six years after they were initially eligible to apply for CRSC.
- NVLSP has a pending class action lawsuit in the U.S. District Court for the Southern District of Texas (Soto v. United States) challenging the DoD's practice of restricting CRSC payments to six years.

Common Myths

None of the following automatically qualify for CRSC:

- Seeing dead bodies
- Buddy got CRSC for similar condition or event
- Doctor says condition is from combat
- PEB found that condition was combat-related (though presumption for Navy)
- VA coded condition as related to combat
- Survived military sexual trauma or racial discrimination while deployed

Sample CRSC Client: GI Jane

- Served in Army
- MOS: Judge Advocate General
- Served: August 2005 to March 2008
- Deployed to Iraq
- Suffered a knee injury while performing physical training in Iraq
- While riding in a convoy, her vehicle was hit by an IED
- Following deployment, she sought treatment for PTSD due to the convoy incident. She was ultimately retired from the Army due to PTSD.
- Has a 10% rating for the knee and a 50% rating for PTSD.

Our Contact Info for Free Legal Services

Website:

<https://www.nvlsp.org/what-we-do/lawyers-serving-warriors/>

Phone:

202.265.8305, ext. 152

E-mail:

info@nvlsp.org





**Thank you so much for helping
our nation's veterans!**

QUESTIONS?

