§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) Inquiry. With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other

of interment or memorialization, as an individual who has been convicted of a State capital crime, and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) A person found under procedures specified in §38.618 to have committed a Federal or State capital crime but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) Notice. The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) Receipt of notification. The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) Decision where notification previously received. Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) Inquiry. (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime;

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) Decision after inquiry. Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to §38.618(a).

(g) Notice of decision. Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with §19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§19.26 through 19.38 of this title.


§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) Inquiry. With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other
sources of potentially relevant information. After completion of this in-
quiry and any further measures re-
quired under paragraphs (c), (d), (e),
and (f) of this section, the cemetery di-
rector will make a decision on the re-
quest for interment or memorialization
in accordance with paragraph (b), (e),
or (g) of this section.

(b) Decision approving request without
a proceeding or termination of a claim by
personal representative without a pro-
ceeding. (1) If, after conducting the in-
quiry described in paragraph (a) of this
section, the cemetery director deter-
mines that there is no clear and con-
vincing evidence that the deceased
committed a Federal or State capital
crime of which he or she was not con-
victed due to death or flight to avoid
prosecution, and the deceased remains
otherwise eligible, the cemetery direc-
tor will make a decision approving the
interment or memorialization.
(2) If the personal representative
elects for burial at a location other
than a VA national cemetery, or makes
alternate arrangements for burial at a
location other than a VA national cem-
etery, the request for interment or me-
memorialization will be considered with-
drawn and action on the request will be
terminated.

(c) Initiation of a proceeding. (1) If,
after conducting the inquiry described
in paragraph (a) of this section, the
 cemetery director determines that
there appears to be clear and con-
vincing evidence that the deceased has
committed a Federal or State capital
crime of which he or she was not con-
victed by reason of unavailability for
trial due to death or flight to avoid
prosecution, the cemetery director will
provide the personal representative of
the deceased with a written summary
of the evidence of record and a written
notice of procedural options.
(2) The notice of procedural options
will inform the personal representative
that he or she may, within 15 days of
receipt of the notice:
(i) Request a hearing on the matter;
(ii) Submit a written statement, with
or without supporting documentation,
for inclusion in the record;
(iii) Waive a hearing and submission
of a written statement and have the
matter forwarded immediately to the
Under Secretary for Memorial Affairs
for a finding; or
(iv) Notify the cemetery director
that the personal representative is
withdrawing the request for interment
or memorialization, thereby, closing
the claim.
(3) The notice of procedural options
will also inform the personal representa-
tive that, if he or she does not exer-
cise one or more of the stated options
within the prescribed period, the mat-
ter will be forwarded to the Under Sec-
retary for Memorial Affairs for a find-
ing based on the existing record.

(d) Hearing. If a hearing is requested,
the Director, Memorial Services Net-
work will conduct the hearing. The
purpose of the hearing is to permit the
personal representative of the deceased
to present evidence concerning whether
the deceased committed a crime which
would render the deceased ineligible
for interment or memorialization in a
national cemetery. Testimony at the
hearing will be presented under oath,
the personal representative will
have the right to representation by
counsel and the right to call witnesses.
The VA official conducting the hearing
will have the authority to administer
oaths. The hearing will be conducted in
an informal manner and court rules of
evidence will not apply. The hearing
will be recorded on audiotape and, un-
less the personal representative waives
transcription, a transcript of the hear-
ing will be produced and included in
the record.

(e) Decision of approval or referral for
a finding after a proceeding. Following a
hearing or the timely submission of a
written statement, or in the event a
hearing is waived or no hearing is re-
quested and no written statement is
submitted within the time specified:
(1) If the cemetery director deter-
mines that it has not been established
by clear and convincing evidence that
the deceased committed a Federal or
State capital crime of which he or she
was not convicted due to death or
flight to avoid prosecution, and the de-
ceased remains otherwise eligible, the
cemetery director will make a decision
approving interment or memorializa-

§ 38.620 Persons eligible for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, whose last such service terminated