

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W15-08

Title	Action Requested
Military Service: Notification of Military Status	Review and submit comments by January 23, 2015
Proposed Rules, Forms, Standards, or Statutes Revise form MIL-100	Proposed Effective Date July 1, 2015
Proposed by Collaborative Justice Courts Advisory Committee Hon. Richard Vlavianos, Chair	Contact Carrie Zoller, Supervising Attorney 415-865-8829 Carrie.Zoller@jud.ca.gov Adrienne Toomey, Attorney 415-865-7977 Adrienne.Toomey@jud.ca.gov

Executive Summary and Origin

At the recommendation of the Collaborative Justice Courts Advisory Committee, the Judicial Council adopted revisions to the optional *Notification of Military Status* (form MIL-100), effective January 1, 2015. These revisions respond to recent legislation directing courts to (1) inform criminal defendants at arraignment that there are provisions of law designed for former or current military service members who have been charged with a crime and (2) that the defendant may request a copy of the Judicial Council military form explaining those rights. The legislation directed the Judicial Council to revise the military form accordingly. The committee now seeks public comment on the revised form that was adopted January 1, 2015, and will consider additional proposed revisions to be effective July 1, 2015.

Background

The Legislature has authorized various sentencing considerations and restorative relief provisions for criminally charged current or former members of the U.S. Military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service.

Senate Bill 1110 amends Penal Code section 858, effective January 1, 2015, to direct the Judicial Council to revise the military form to include information explaining the rights of individuals

who have active duty or veteran military status under section 1170.9 and related statutes and to include a space for the local court to provide contact information for the County Veterans Service Office. It also directs that courts must inform criminal defendants at arraignment that there are provisions of law designed for former or current military service members who have been charged with a crime and that the defendant may request a copy of the Judicial Council military form that explains those rights.

The court must also inform defendants that they may decline to submit the form without penalty and that if they do submit the form, they must file it with the court and serve the prosecution and defense counsel. If defendants acknowledge their military status and submit the form to the court, the court must transmit submitted forms to the county veterans service officer to verify military status and to the Department of Veterans Affairs.

Penal Code section 1170.9 requires that when a person is convicted of a criminal offense, is eligible for probation, and alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. Military, the court must hold a hearing before sentencing to make determinations regarding the defendant's military service and whether the defendant may suffer from a mental disorder or condition as a result of that service. If the court finds those factors to be present and places the defendant on probation, section 1170.9 authorizes the court to place the defendant into a treatment program. This section also authorizes courts to grant restorative relief broader than that available under section 1203.4 to eligible defendants.

Section 1170.9 was amended—effective January 1, 2015, by Assembly Bill 2098 (Levine; Stats. 2014, ch. 163)—to require that if the court makes those factual findings, it shall consider those circumstances as a factor in favor of granting probation.

Section 1170.91—also enacted effective January 1, 2015, by AB 2098—requires that if the court makes those findings, it shall consider that as a factor in mitigation when imposing a term under section 1170(b).

Section 1001.80—enacted effective January 1, 2015, by Senate Bill 1227 (Hancock; Stats. 2014, ch. 658)—authorizes that when a court makes these findings as to a misdemeanor defendant, the court may place the defendant in a pretrial diversion program if the defendant consents to and waives his or her speedy-trial rights.

Prior Circulation

The Judicial Council adopted form MIL-100 effective January 1, 2014, at the recommendation of the Collaborative Justice Courts Advisory Committee. The committee recommended adoption of the form to facilitate courts' ability to address legal issues implicated by a party's military service status and to comply with alternative criminal sentencing considerations for current and former military service members under Penal Code section 1170.9.

Recent legislation directing the Judicial Council to revise the military form was chaptered on September 27, 2014. To ensure that the form is revised as directed by the Legislature and available to courts by January 1, 2015, the committee sought out-of-cycle adoption of the form without a prior period of public comment. Effective January 1, 2015, the Judicial Council approved the revisions to the form—the first since the form was adopted. The committee now circulates the revised form for public comment and will consider any further revisions, to be effective July 1, 2015.

The Proposal

Effective January 1, 2015, the Judicial Council adopted the following revisions to the optional *Notification of Military Status* (form MIL-100), at the recommendation of the Collaborative Justice Courts Advisory Committee:

1. Added a second page (on the back side of the existing form) to include information explaining the rights of individuals who have active duty or veteran military status under Penal Code section 1170.9, as amended effective January 1, 2015; section 1170.91, as enacted effective January 1, 2015; and section 1001.80, as enacted effective January 1, 2015.
2. Added the following language to page 1 of the form: “Consult your attorney before submitting this form. You may decline to submit this form to the court without penalty.” (See section 858(d), enacted effective January 1, 2015, by Senate Bill 1110.)
3. Revised item 1 on page one to change check boxes indicating what type of proceeding the individual is a party to (criminal, family, juvenile, other) to a single check box stating “I am a party in a superior court case.”
4. Renumbered item 4 as item 5 and added new item 4 to page one to read, “I understand that if I submit this form to the court as a defendant in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.” (*Id.*, § 858(e).)
5. Added language to the “Notice” box on page 1 to read: “**Certain provisions of California law apply to current and former members of the U.S. Military who have been charged with a crime when certain conditions are met. Please see the back of this form for more information. To submit this form as a party in a criminal case, you must file it with the court and serve it on the prosecuting attorney and defense counsel.**” (*Ibid.*)
6. Added a text field to page 1 for the local court to provide contact information for the local County Veterans Services Office. (*Id.*, § 858(c).)
7. Added reference to sections 1170.91 and 1001.80 to the right footer on page 1.
8. Made minor technical and citation revisions to page 1.

The revised form as adopted January 1, 2015, is attached at pages 5–6.

Alternatives Considered

The committee considered circulating the proposal for public comment before recommending that the Judicial Council adopt the revisions. But because this would delay adoption of the form, the committee decided to first seek Judicial Council approval of the revised form so that it is available to courts and defendants when the new law goes into effect on January 1, 2015.

Implementation Requirements, Costs, and Operational Impacts

This proposal seeking input about the recent revisions to form MIL-100 is unlikely to generate significant cost or operational impacts, beyond the cost for courts to reproduce paper copies of the forms, if provided, assuming any further revisions to the form are necessary. Although courts may experience operational impacts resulting from new legislative arraignment admonition requirements, any proposal to further revise the form will continue to facilitate these court operations.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Do the recent revisions to the form appropriately address the stated purpose?
- Are any additional revisions recommended?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Revised form MIL-100, at pages 5–6

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	For court use only
TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
DRAFT NOTIFICATION OF MILITARY STATUS	CASE NUMBER:

Consult your attorney before submitting this form. You may decline to submit this form to the court without penalty.

- I (name): _____ declare as follows:
1. I am a party in a superior court case.
 2. I am currently a member of the state or federal armed services or reserves. My entry date is: _____, and I
 - a. am on active duty service.
 - b. have been called or ordered into active duty service.
 - c. am not on active duty service.
 - d. other (please explain): _____
 3. I used to serve in the state or federal armed services or reserves. I was discharged on (date): _____
 4. I understand that if I submit this form to the court as a defendant in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.
 5. I am filing this form on behalf of _____, a party to the above entitled case, whom I am informed and believe is a member veteran of the state or federal armed services. I am the attorney other (specify): _____ of this party. My contact information is provided at the top of this form follows: Name: _____ Address: _____ Telephone number: _____

Date: _____



(TYPE OR PRINT NAME)

SIGNATURE

Local County Veterans Services Office Information (to be provided by local court):	
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NOTICE

Certain provisions of California law apply to current and former members of the U.S. Military who have been charged with a crime when certain conditions are met. Please see the back of this form for more information. To submit this form as a party in a criminal case you must file it with the court and serve it on the prosecuting attorney and defense counsel. Filing of this notification form does not substitute for filing of other forms or petitions that are required by your court case. If you are requesting consideration or restorative relief under Penal Code section 1170.9, this form alone will not meet the requirement that you assert to the court that the crime you were charged with was a result of a condition caused by your military service. If you are filing for relief from financial obligation during military service, a notification of military deployment and request to modify a support order, or other relief under the Service Members' Civil Relief Act (50 App. U.S.C. §§ 501-597(b)), you must complete the appropriate forms, and completion of this form is not required. Please see form MIL-010 (*Notice of Petition and Petition for Relief From Financial Obligations During Military Service*) and form FL-398 (*Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*).

**YOU SHOULD CONSULT WITH YOUR ATTORNEY ABOUT THE FOLLOWING INFORMATION
AND BEFORE SUBMITTING THIS FORM.**

If you are a current or former member of any branch of the U.S. Military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of your military service and charged with a crime, you may be entitled to certain rights under some California laws. Below are brief explanations of some of those laws. You should consult with your attorney to discuss how these and/or other laws may apply to you.

You are not required to have an honorable discharge, to have combat service, or to be accepted into a Veterans Court to be eligible for the rights described in the following statutes.

California Penal Code 1170.9: Consideration for alternative sentencing and restorative relief.

Rights include possibly:

- Receiving treatment instead of prison or jail time for certain crimes
- Having a greater chance of receiving probation
- Having conditions of probation deemed satisfied early, other than any victim restitution ordered, and probation terminated early
- Having some felonies reduced to misdemeanors
- Having the court restore rights, dismiss penalties, and/or set aside conviction for certain crimes

Requirements include:

- For consideration for alternative sentencing:
 - Convicted of certain criminal offenses (some crimes do not qualify)
 - Eligible for probation and court orders probation
 - For restorative relief following order of probation:
 - In substantial compliance with conditions of probation
 - A successful participant in and demonstration of significant benefits from treatment and services
 - No danger to the health and safety of others
-

California Penal Code 1001.80: Diversion in misdemeanor cases.

Rights include:

- *Pretrial* diversion program instead of trial and potential conviction and incarceration
- Dismissal of eligible criminal charges following satisfactory performance in program
- Arrest is deemed to have “never occurred” for most purposes following successful completion of program

Requirements include:

- Application to misdemeanors only, *not* felonies
 - Consent to diversion
 - Waiver of right to speedy trial
 - Satisfactory performance in program
-

California Penal Code 1170.91: Mitigating factor in felony sentencing.

- The court shall consider these circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could mean a more lenient sentence.