

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

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## INVITATION TO COMMENT

### SPR19-20

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Petition for Resentencing (Military)	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Approve form CR-412/MIL-412	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Amy Kimpel, 415-865-7995 <a href="mailto:Amy.Kimpel@jud.ca.gov">Amy.Kimpel@jud.ca.gov</a> Sarah Fleischer-Ihn, 415-865-7702 <a href="mailto:Sarah.Fleischer-Ihn@jud.ca.gov">Sarah.Fleischer-Ihn@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee recommends a new optional form, *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), for petitions for resentencing under [Assembly Bill 865](#) (Stats. 2018, ch. 523). The legislation allows veterans to benefit retroactively from the passage of [Penal Code section 1170.91](#), which permits a judge to consider enumerated conditions (sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems) that have resulted from military service as a mitigating factor at sentencing.

### Background

Effective January 1, 2019, AB 865 allows eligible military service members and veterans sentenced before January 1, 2015, to petition the court for resentencing. The number of veterans and service members who may be eligible for resentencing under AB 865 is difficult to ascertain. The California Department of Corrections and Rehabilitation (CDCR) reported that as of February 2014, 4,521 currently incarcerated inmates at CDCR were verified by the U.S. Department of Veterans Affairs as having prior military service. (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 865 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, p. 4.) Estimates are that about half of incarcerated veterans suffer from a mental health disorder. (*Ibid.*) Aside from the state prison population, eligible petitioners are likely incarcerated in county jails and out of custody on supervision (e.g., on parole or probation). Most of the AB 865 petitions for resentencing are anticipated to be filed by self-represented litigants.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

## **The Proposal**

An optional Judicial Council form to implement AB 865 will aid self-represented litigants who may be eligible for this form of relief to petition the court for resentencing. The form will also be useful to courts by providing a standard format for self-represented litigants to file petitions for resentencing.

The proposed optional *Petition for Resentencing Based on Health Conditions from Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412):

- Includes space in the header to indicate a petitioner's CDC or ID number and date of birth, the identifiers to assist court staff to connect a defendant applying for resentencing to the appropriate case if the pro. per petitioner does not accurately report his or her case number;
- Asks whether the petitioner is serving a felony conviction and whether he or she is in custody or on supervision;
- Includes space to list the date(s) and offense(s) of conviction;
- Directs a petitioner to indicate branch and dates of military service;
- Prompts the petitioner to select or identify the qualifying health condition resulting from military service;
- Asks whether the petitioner believes that the health conditions resulting from service were not considered as a factor at sentencing;
- Asks whether the petitioner was sentenced before January 1, 2015;
- Directs the petitioner to include supporting documentation of his or her claim, including military documents, mental health treatment records, or medical records, if available; and
- Instructs that proposed form CR-106 can be used to provide proof of service.

## **Alternatives Considered**

The committee considered titling the form *Petition for Resentencing Based on Mental Health Problems From Military Service* but, after receiving feedback, realized that the title did not fully capture the enumerated conditions listed in Penal Code section 1170.91(b). Specifically, though traumatic brain injury may be considered a mental health problem in some circumstances, it is more often conceived of as a physical disability or physical health problem. To remedy this ambiguity, the committee retitled the form *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)*. For the same reason, the committee recommends using the term "health condition" throughout the form.

## **Fiscal and Operational Impacts**

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

## Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is the form written in a way that would be understandable to the intended user, an unrepresented criminal defendant with prior military service who is serving a felony sentence and may still be in criminal custody?
- The form is primarily intended for use by self-represented litigants, but it may also be used by attorneys. However, the form is drafted from a self-represented litigant's perspective (e.g., item #1, "I am currently serving a sentence for the conviction listed below"). Is this confusing? Should the form be modified to exclude attorney information and limited to use only by self-represented litigants? Are there other ways this form could be drafted so that both attorneys and self-represented litigants can use the same form?
- Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?
- Is the term "health conditions" the best term to encompass the conditions enumerated in Penal Code section 1170.91(b)? If not, what term should be used?
- Given that the form suggests providing supporting documentation, including medical and mental health treatment records, should the form also mention the process for filing those documents under seal? If so, how should that process be described for a self-represented litigant?
- Should an "INFO" form also be developed to accompany this form to aid self-represented litigants in filling it out and filing with the court?

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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## Attachments and Links

1. Proposed form CR-412/MIL-412, at page 5

2. Link A: [Assem. Bill 865](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB865), (Stat. 2018, ch. 523) at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB865](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB865)
3. Link B: [Pen. Code, § 1170.91](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN), at [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b>	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ CDC OR ID NUMBER: _____ DATE OF BIRTH: _____	
<b>PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS FROM MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)</b>	
<b>Instructions:</b> File this petition with the same court where you were sentenced. You will need to file a separate petition for each case in which you are asking for resentencing.	CASE NUMBER: _____  <b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPARTMENT: _____

I (name): \_\_\_\_\_, the defendant in the above-entitled case, declare as follows:

1.  I am currently serving a sentence for the felony conviction listed below.  
 I am currently in jail or prison.  
 I am on supervision (for example, probation, parole, PRCS, mandatory supervision) because of my conviction.

2.  On (date of conviction): \_\_\_\_\_, I was convicted of the following felony offenses:

Code	Section	Name of offense

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

- 3A.  I was a member of the U.S. military. I served in (branch of military): \_\_\_\_\_ from (date of entry into military): \_\_\_\_\_ until (last date served in the U.S. military): \_\_\_\_\_
- 3B.  I am currently a member of the U.S. military. I serve in (branch of military): \_\_\_\_\_ and my entry date was: \_\_\_\_\_

4.  I believe that as a result of my military service, I am a person who may be suffering from the following health conditions (check all that apply):

- Sexual trauma
- Traumatic brain injury (TBI)
- Post-traumatic stress disorder (PTSD)
- Substance abuse
- Mental health problems (list or describe): \_\_\_\_\_

5.  I believe that when I was sentenced, the judge did not consider my health condition resulting from my military service as a factor in deciding my sentence.
6.  I was sentenced before January 1, 2015.
7.  I have attached relevant records or other documents supporting my claim (for example, military records, conviction documents, mental health treatment records, medical records).

Date: \_\_\_\_\_

\_\_\_\_\_  
 SIGNATURE OF PETITIONER/DEFENDANT

**Proof of Service form CR-106 may be used to provide proof of service of this petition.**