

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT W22-05

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service	Review and submit comments by January 20, 2023
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise form CR-412/MIL-412	September 1, 2023
<b>Proposed by</b>	<b>Contact</b>
Criminal Law Advisory Committee Hon. Brian M. Hoffstadt, Chair	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 revisions to the optional Judicial Council petition for resentencing based on health conditions due to military service to reflect statutory changes to Penal Code section 1170.91(b). This section was amended to delete the requirement that the petitioner was sentenced before January 1, 2015, and to add exclusions for petitioners convicted of specified serious and violent felony offenses and offenses requiring sex offender registration. The committee also recommends technical and formatting revisions to comply with Judicial Council form standards.

### Background

Senate Bill 1209 (Stats. 2022, ch. 721) amended, in relevant part, Penal Code section 1170.91(b) to remove the requirement that the petitioner was sentenced before January 1, 2015, and to add exclusions for petitioners convicted of certain serious and violent felonies specified under Penal Code section 667(e)(2)(c)(iv)<sup>1</sup> and offenses requiring sex offender registration.

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<sup>1</sup> Pen. Code, § 667(e)(2)(c)(iv) The defendant suffered a prior serious or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A “sexually violent offense” as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger

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 It is circulated for comment purposes only.*

## **The Proposal**

This proposal would revise form CR-412/MIL-412 to reflect statutory changes to section 1170.91(b), as follows:

- Revise item 6 to remove the requirement that the petitioner verify that they were sentenced before January 1, 2015;
- Add a new item 6 stating that “Petitioner was not convicted of, or does not have one or more prior convictions for, an offense that is listed in Penal Code section 667(e)(2)(C)(iv) or an offense requiring sex offender registration under Penal Code section 290(c)”;
- Make additional technical and nonsubstantive revisions to comply with Judicial Council form standards.

## **Alternatives Considered**

The committee did not consider the alternative of taking no action, determining that it was important to revise the forms to implement legislative changes.

## **Fiscal and Operational Impacts**

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

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than the defendant as defined by Section 286, or sexual penetration with another person who is under 14 years of age and more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machinegun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

### **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?

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. Form CR-412/MIL-412, at page 4

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 0;">Not approved by the Judicial Council</h2>
<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 DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)</b>	
<b>Instructions</b> (if you are filing for yourself): File this petition with the same court where you were sentenced. File a separate petition for each case in which you are asking for resentencing. "Petitioner" as used in this form refers to you.	
CASE NUMBER:	
<b>FOR COURT USE ONLY</b>	
DATE:	
TIME:	
DEPARTMENT:	

**PETITIONER OR COUNSEL DECLARES AS FOLLOWS:**

1. Petitioner (the defendant in the above-entitled criminal action) is currently serving a sentence for the felony conviction listed below.
  - a.  Petitioner is currently in jail or prison.
  - b.  Petitioner is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of the conviction.
2. On (date of conviction): \_\_\_\_\_, petitioner was convicted of the following felony offenses:

Code	Section	Name of offense

- a. If additional space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025).
3. Military service (choose one)
  - a.  Petitioner was a member of the U.S. military. Petitioner served in (branch of military): \_\_\_\_\_ from (date of entry into military): \_\_\_\_\_ until (last date served in the U.S. military): \_\_\_\_\_
  - b.  Petitioner is currently a member of the U.S. military. Petitioner serves in (branch of military): \_\_\_\_\_ and petitioner's entry date was: \_\_\_\_\_
4. As a result of military service, petitioner may be suffering from the following health conditions (check all that apply):
 

<input type="checkbox"/> Sexual trauma	<input type="checkbox"/> Post-traumatic stress disorder (PTSD)
<input type="checkbox"/> Traumatic brain injury (TBI)	<input type="checkbox"/> Substance abuse
<input type="checkbox"/> Mental health problems (list or describe): _____	
5.  When petitioner was sentenced, the judge did not consider health conditions resulting from petitioner's military service as a factor in deciding the sentence.
6.  Petitioner was not convicted of, or does not have one or more prior convictions for, an offense that is listed in Penal Code section 667(e)(2)(C)(iv) or an offense requiring sex offender registration under Penal Code section 290(c).

Date: \_\_\_\_\_ ▶  
SIGNATURE OF PETITIONER OR ATTORNEY

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