



# Judicial Council of California

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

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## INVITATION TO COMMENT

### SPR23-34

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**Title**

Criminal Procedure: Petition for  
Resentencing Based on Health Conditions  
From Military Service

**Action Requested**

Review and submit comments by May 12,  
2023

**Proposed Rules, Forms, Standards, or Statutes**

Revise form CR-412/MIL-412

**Proposed Effective Date**

January 1, 2024

**Proposed by**

Criminal Law Advisory Committee  
Hon. Brian M. Hoffstadt, Chair

**Contact**

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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 Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412). These revisions would clarify that the petitioner may apply for relief if a health condition was discovered after the original sentencing.

### Background

Penal Code section 1170.91 was enacted by Assembly Bill 2098 (Stats. 2014, ch. 163) and required the court, starting January 1, 2015, to consider a defendant's status as a veteran suffering from health conditions as a result of military service as a mitigating factor for sentencing. Section 1170.91 was made retroactive by Assembly Bill 865 (Stats. 2018, ch. 523) by authorizing a court to resentence any person sentenced for a felony conviction before January 1, 2015, who was a veteran suffering from health conditions as a result of military service. Taken together, courts are required to consider military service–related health conditions as a mitigating factor for persons sentenced on or after January 1, 2015, and to consider petitions for resentencing for persons sentenced before January 1, 2015, with military service–related health conditions.

Senate Bill 1209 (Stats. 2022, ch. 721) amended, in relevant part, Penal Code section 1170.91(b) to remove the requirement that the petitioner be sentenced before January 1, 2015, and to add

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exclusions for petitioners convicted of specified serious and violent felonies and offenses requiring sex offender registration.

## **Prior Circulation**

A proposal to amend form CR-412/MIL-412 circulated for public comment from December 9, 2022, to January 20, 2023.<sup>1</sup> The proposed revisions reflected statutory changes to Penal Code section 1170.91(b) by SB 1209 by deleting the requirement that the petitioner be sentenced before January 1, 2015, and adding item 6 for exclusions for petitioners convicted of specified serious and violent felony offenses and offenses requiring sex offender registration.

The committee received two comments agreeing with the proposal, from the Superior Court of Orange County and the Orange County Bar Association, one comment that did not indicate a position but appears to agree with the proposal if modified, from Justice Eileen C. Moore of the Fourth Appellate District of the Court of Appeal, Division Three, and one comment from a member of the public disagreeing with the proposal due to a disagreement with the underlying law.

The committee incorporated one further substantive change to the originally circulated form based on the comments from Judge Moore, as well as deletion of a provision asking for the moving party's birthdate, and is now circulating the further revised form for comment.

## **The Proposal**

This proposal would revise form CR-412/MIL-412 as follows:

- Revise item 5 to state that “[w]hen the petitioner was sentenced, the judge did not consider all of the above [identified] health conditions resulting from petitioner’s military service as a factor in deciding the sentence”;
- Delete a provision asking for the moving party’s birthdate; and
- As previously circulated:<sup>2</sup>
  - Eliminate item 6 from current form, which mandates that the original sentencing have been before January 2015;
  - Add new item 6 to exclude requests for resentencing for petitioner who are currently or were previously convicted of specified offenses; and
  - Make additional technical revisions.

### **Health conditions that were discovered after the original sentencing**

Item 4 and 5 correspond to section 1170.91(b)(1), which authorizes relief for “[a] person currently serving a sentence for a felony conviction . . . who is, or was, a member of the United

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<sup>1</sup> See Judicial Council of Cal., Invitation to Com., *Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service* (W23-05), [www.courts.ca.gov/documents/w23-05.pdf](http://www.courts.ca.gov/documents/w23-05.pdf)

<sup>2</sup> The proposed revisions that were previously circulated are not discussed below because they were previously discussed in the prior invitation to comment.

States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person’s military service,” who can show that “the circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person’s military service was not considered” as a mitigating factor during sentencing.

A commenter expressed concern that the current phrasing of item 5 could be read to exclude relief for health conditions that were diagnosed after the original sentencing, stating that SB 1209 intended, in part, to provide relief in these types of situations.

According to the bill author, SB 1209 sought to address situations where health conditions related to military service are belatedly discovered after the original sentencing, such as the situation in *People v. Valliant* (2020) 55 Cal.App.5th 903. (Assem. Com. on Pub. Saf., Analysis of Sen. Bill No. 1209 (2021–2022 Reg. Sess.) as amended May 19, 2022, p. 4.) In *Valliant*, the defendant was sentenced in March 2015, and the Department of Veterans Affairs verified in 2017 his post-traumatic stress disorder stemming from military service. The defendant filed a petition for resentencing under section 1170.91(b), asserting that his military service–related trauma was not considered as a factor in mitigation at the time of sentencing. The trial court denied his petition because he was sentenced after January 1, 2015, and section 1170.91 allowed resentencing only for persons sentenced before January 1, 2015. The ruling was affirmed on appeal, but the court invited the Legislature to revisit the issue and, “if it believes it is appropriate to do so, to provide Valliant and any other veteran in a similar position, with statutory relief.” (*Id.* at p. 912.) The Supreme Court denied the petition for review, but Justice Liu provided a concurring statement, noting that “by requiring that the original sentencing occur prior to January 1, 2015, for an individual to be eligible for resentencing—irrespective of when it was determined that the trauma, mental health, or substance abuse conditions were a result of military service—section 1170.91, subdivision (b) fails to ensure equal treatment of all veterans.” (*Id.*, at 913b (conc. statement. of Liu, J).)

According to the bill’s author, the key point of SB 1209 was “to ensure that veterans that have experienced trauma related to their military service are provided with the sentencing mitigation and resentencing opportunities we have already passed into law. The initial bill that allowed for sentencing mitigation did not apply to resentencing at all, treating those veterans who were already incarcerated differently. We corrected this with a bill to allow for resentencing for crimes that occurred before 2015. Unfortunately, this retroactivity has also been applied unevenly, to such an extent that CA Supreme Court Justice Goodwin Liu noted this section of law ‘fails to ensure equal treatment of all veterans.’ SB 1209 seeks to correct this injustice against those who have served our country. We’ve learned a lot about the impacts of trauma, how long symptoms can take to manifest, and how they can alter thinking and behavior down the road. This bill ensures those with trauma from their honorable military service and sacrifice are provided the considerations we’ve already passed into law.” (Assem. Com. on Pub. Saf., Analysis of Sen. Bill No. 1209 (2021–2022 Reg. Sess.) as amended May 19, 2022, p. 3.)

In light of the comment and the legislative history behind SB 1209, the committee recommends revising item 5 as follows:

When petitioner was sentenced, the judge did not consider all of the above health conditions resulting from petitioner’s military service as a factor in deciding the sentence.

The “all of the above” language would tie item 5 to item 4, which allows the petitioner to identify health conditions they may be suffering from as a result of military service:

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 ( <i>list or describe</i> ): |  |

### **Moving party’s date of birth**

The committee recommends deleting a provision asking for the moving party’s date of birth as unnecessary.

### **Technical amendments**

The committee also recommends the following nonsubstantive amendments to the form:

- Adding a court address box
- Reformatting the instructions
- Identifying petitioner in item 1 as “defendant named above” (a modification from the “defendant in the above-entitled criminal action,” proposed to be added in the prior circulation).

### **Alternatives Considered**

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

The committee considered Justice Moore’s suggestion to revise item 5 to refer to “all diagnosed” health conditions resulting from military service. However, nothing in the statute requires a health condition to be formally “diagnosed,” only that the petitioner “may be suffering from” specific health conditions resulting from military service. Thus, the committee did not refer to diagnosed health conditions in the form.

### **Fiscal and Operational Impacts**

Expected costs from revising this optional form should be limited to training 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?

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, at page 6 (originally circulated revisions highlighted in yellow, with new proposed revisions in green)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  <b>FOR COURT USE ONLY</b>  <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 0;">Not approved by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
THE PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: CDC OR ID NUMBER:	CASE NUMBER:
<b>PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)</b>	<b>FOR COURT USE ONLY</b>  DATE: TIME: DEPARTMENT:

**Instructions** (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.

1. Petitioner (the defendant named above) 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 (Penal, Vehicle, etc.)	Section	Name of offense

Check here if additional space is needed for listing offenses and use *Attachment to Judicial Council Form* (form MC-025) to list the information requested.

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 all of the above 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.**