



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-040

For business meeting on September 19, 2023

Title

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

Agenda Item Type

Action Required

Effective Date

January 1, 2024

Rules, Forms, Standards, or Statutes Affected

Revise form CR-412/MIL-412

Date of Report

July 31, 2023

Recommended by

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

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revising the optional Judicial Council petition for resentencing based on health conditions due to military service to reflect statutory changes expanding eligibility for relief and clarifying that relief is available for health conditions discovered after sentencing.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise *Petition for Resentencing Based on Health Conditions Due to Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412) to reflect statutory changes to section 1170.91(b) expanding eligibility for relief and clarifying that relief is available for health conditions discovered after sentencing.

The proposed revised form is attached at page 7.

Relevant Previous Council Action

Optional form CR-412/MIL-412 was approved by the Judicial Council, effective January 1, 2020, to implement the provisions of Assembly Bill 865 (Stats. 2018, ch. 523). This legislation

allowed veterans to benefit retroactively from Penal Code section 1170.91,¹ which permits a judge to consider health conditions that have resulted from military service as a mitigating factor at sentencing. This form has not been revised since its approval.

Analysis/Rationale

Enacted by Assembly Bill 2098 (Stats. 2014, ch. 163), section 1170.91 requires 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 to a determinate term. Assembly Bill 865 (Stats. 2018, ch. 523) made section 1170.91 retroactive 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. (§ 1170.91(b).) 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 section 1170.91(b) to remove the requirement that the petitioner be sentenced before January 1, 2015. According to Senator Eggman, the bill’s author, this amendment 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 that his post-traumatic stress disorder stemmed 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 the petition because he was sentenced after January 1, 2015, and section 1170.91(b) 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.” (*People v. Valliant, supra*, 55 Cal.App.5th 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.” (*People v. Valliant* (2020) 275 Cal.Rptr.3d 221, 228–230 (conc. statement of Liu, J.).)

¹ All further references are to the Penal Code unless otherwise specified.

SB 1209 also expanded resentencing relief under section 1170.91(b) to indeterminate sentences, with the exclusion of convictions for specified serious and violent felonies and offenses requiring sex offender registration.

The proposed form revisions reflect these statutory changes by:

- Revising item 5 to further incorporate statutory language stating that the circumstance of suffering from the identified health condition was not considered as a mitigating factor in deciding the sentence;
- Revising item 6 to remove the requirement that the petitioner verify that they were sentenced before January 1, 2015;
- Adding a new item 6 with a check box for a petitioner to indicate whether there is new evidence about a health condition that was discovered after sentencing; and
- Adding a new item 7 stating, “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).”

The committee also proposes deleting the provision asking for the moving party’s date of birth as unnecessary, and technical and formatting revisions to comply with Judicial Council form standards.

Policy implications

This proposal furthers the council’s policy of ensuring access to justice for all litigants by conforming the form to reflect statutory changes.

Comments

The Criminal Law Advisory Committee circulated the proposed form for public comment two separate times, incorporating revisions based on comments received in the first circulation in the second circulation. Some of the more significant comments are provided below. The committee’s specific responses to each comment are available in the attached comment charts at pages 8–19.

First circulation (W23-05)

This proposal first circulated for public comment from December 9, 2022, to January 20, 2023. The proposed revisions reflected statutory changes to section 1170.91(b) by deleting the requirement that the petitioner be sentenced before January 1, 2015, adding item 6 excluding petitioners convicted of specified serious and violent felony offenses and offenses requiring sex offender registration, and making technical changes.

The committee received four comments in total: 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 full text of the comments and the committee’s responses are on the attached comment chart labeled W23-05; the substantive comments are summarized below.

“Diagnosed” health conditions. The committee considered a comment 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 declines to refer to diagnosed health conditions in the form.

Health conditions that were discovered after the original sentencing. Items 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 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 –which was not changed in the first proposal circulated– could be read to exclude relief for health conditions that were diagnosed after the original sentencing, stating that SB 1209 intended to provide relief in these types of situations.

In light of the legislative history behind SB 1209, the committee proposed 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>): | |

The committee recirculated the proposal to seek further comment on these changes, as well as deleting a provision asking for the moving party’s date of birth as unnecessary, and further technical changes, including adding a court address box to the petition.

Second circulation (SPR23-34)

The committee received six comments in total: two comments agreeing with the proposal from the Superior Court of Orange County and a criminal defense attorney; three comments that agreed if modified from Justice Eileen Moore of the Fourth District Court of Appeal, the Orange County Bar Association, and a criminal defense attorney; and one comment from a member of the public that did not indicate a position but appears to agree with the proposal if modified. The

full text of the comments and the committee’s responses are on the attached comment chart labeled SPR23-34; the substantive comments are summarized below.

Additional statutory language. Three commenters requested the committee incorporate additional statutory language from section 1170.91(b)(1) into the form by further revising item 5 to state that the identified health condition was not considered “as a mitigating factor” in deciding the sentence and when the petitioner was sentenced, the judge did not “consider the circumstance of suffering from all of the above health conditions” resulting from petitioner’s military service as a factor in deciding the sentence. The committee recommends adding the additional statutory language to the form.

Indicating the discovery of new evidence discovered after sentencing. Two commenters stated that the proposed changes to the form do not provide a way for a petitioner to indicate the discovery of new evidence after the sentencing, as expressed in *People v. Valliant*. Based on the legislative history of SB 1209, the committee agreed and proposes a new optional item for a petitioner to indicate this.

Appointment of counsel. A commenter requested adding an item for the petitioner to indicate if they are requesting counsel. Because this would be a substantive change to the proposal that would require circulation for public comment, staff recommends the committee consider this suggestion during a future proposal cycle.

Deleting court branch name. The committee proposed adding a court address box to this form and other record cleaning forms to conform to Judicial Council form standards. The committee received a comment objecting to adding the court address box on a separate record cleaning forms proposal,² on the basis that this change could be confusing to self-represented parties and create an additional barrier to filing. The committee declined to remove the address box, which is a standard item on Judicial Council forms, but agreed that the “branch name” line should be removed in order to simplify this section of the form. The committee recommends the same revision on this form.

Alternatives considered

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

Fiscal and Operational Impacts

Expected costs are limited to possible case management system updates and the production of new forms. The committee received comments from one court noting that the revisions would require the production of new forms and review with court staff. The court did not anticipate significant costs or training needs.

² See Judicial Council of Cal., Advisory Com. Rep., *Criminal Procedure: Record Cleaning Forms* (July 28, 2023), p. 10.)

Attachments and Links

1. Form CR-412, at page 7
2. Chart of comments, at pages 8–19
3. Link A: Sen. Bill 1209 (Stats. 2022, ch. 721),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1209

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):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 7/17/2023
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE:	
THE PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: CDC OR ID NO.:	CASE NUMBER:
PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)	FOR COURT USE ONLY 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 (<i>Penal, Vehicle, etc.</i>)	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*):

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

5. When petitioner was sentenced, the judge did not consider **the circumstance of suffering from all of the above** health conditions resulting from petitioner's military service as a **mitigating** factor in deciding the sentence.

6. **Petitioner has new evidence about a health condition that was discovered after sentencing.**

7. **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.

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
1.	Lezlie Abbott Counselor Fresno, California	N	Currently the Penal Code section 1026, et. allows for a legal insanity requirement regardless of mental health conditions due to military service. If they could have distinguishing between right and wrong at the time of commission of the crime, there should not be any changes.	Thank you for reviewing and submitting a comment for this proposal. This comment goes beyond the scope of the proposal.
2.	Hon. Eileen C. Moore Justice Court of Appeal, Fourth Appellate District	NI	<p>Item #5 states: “When petitioner was sentenced, the judge did not consider health conditions resulting from petitioner’s military service as a factor in deciding the sentence.”</p> <p>The impetus for Senator Eggman’s change to Penal Code section 1170.91 was the holding in <i>People v. Valliant</i> (2020) 55 Cal.App.5th 903. Valliant was sentenced prior to January 1, 2015 [when 1170.91 was first enacted], but was not diagnosed with PTSD until sometime in 2016. Thus, he didn’t qualify for resentencing under either subdivision (a) or (b).</p> <p>As time goes by, we are learning more and more about these military-caused maladies. For example, the Council on Criminal Justice’s Veterans Justice Commission issued a preliminary assessment in August 2022. [It is attached]</p> <p>Note that on p. 4, it states: “Research has found robust associations between PTSD, traumatic brain injury, substance use</p>	Thank you for reviewing and submitting a comment for this proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
			<p>disorders, and both aggressive behavior and criminal justice system involvement for veterans.”</p> <p>Also note that on p. 6, it states: “TBI increases the risk for a range of additional cognitive impairment and mental health disorder diagnoses over time, from PTSD and anxiety disorders to schizophrenia and psychotic disorders. These correlations are strongest for TBI and PTSD; for affected veterans, having a TBI is correlated with a 44% increase in later PTSD diagnosis.”</p> <p>Thus, it is apparent that even though the judge may have considered one of the maladies during the original sentencing, another malady may have been diagnosed after sentencing.</p> <p>I think item #5 needs to be updated along with the rest of the proposed updates. I think something like this would be appropriate:</p> <p>“When petitioner was sentenced, the judge did not consider [ALL DIAGNOSED] health conditions resulting from petitioner’s military service as a factor in deciding the sentence.”</p>	<p>The committee declines the suggestion to refer to “all diagnosed” health conditions resulting from military service, as nothing in the statute requires a health condition to be formally diagnosed; the statute only requires demonstrating that the defendant “may be suffering from” the listed ailments resulting from military service. However, the committee agrees to clarify item 5 by revising the language to refer to “all of the above health conditions resulting from petitioner’s military service as a factor in deciding the sentence.” This would tie item 5 in with item 4, which allows the petitioner to state the health conditions that may be suffering from.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
3.	Orange County Bar Association By Michael A. Gregg, President	A	<ul style="list-style-type: none"> • <i>Does the proposal appropriately address the stated purpose?</i> Accurately reflects changes in law. The proposal appropriately addresses the stated purpose. 	Thank you for reviewing and submitting a comment for this proposal.
4.	Superior Court of Orange County By Elizabeth Flores, Operations Analyst	A	<ul style="list-style-type: none"> • <i>Does the proposal appropriately address the stated purpose?</i> Yes • <i>Would the proposal provide cost savings? If so, please quantify.</i> No. Petition filings may increase because those eligible now include defendants who were sentenced to indeterminate life sentences, as well as those sentenced prior to January 1, 2015. It would not be cost saving because new forms must be printed. However, the cost would not be significant. • <i>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?</i> Replacing forms and reviewing them with courtroom clerks and clerk’s office staff. Training would not be needed and the update to staff should take approximately 10 minutes for each department. All procedures referencing the financial statement would have to be updated to include the new form link and 	Thank you for reviewing and submitting a comment for this proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	DRAFT Committee Response
			<p>verbiage. Docket code changes would not be needed.</p> <ul style="list-style-type: none">• <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</i>• <i>How well would this proposal work in courts of different sizes? The proposal will have minimal impact to courts of different sizes.</i>	

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SPR23-34

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

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg, President	AM	<p>The proposed form fails to remedy the concern expressed in <i>People v. Valliant</i> because it does not provide a way for Petitioner to allege the discovery of new evidence after the sentencing. For example, at sentencing the court may have considered defendant’s mental health problems. Subsequent to the sentencing, the mental health problems have worsened and also may have been linked to military service by the VA. If Petitioner checks “mental health problems” in item 4 and checks item 5, the court might erroneously deny the petition without realizing that new evidence exists. The form should add an item to allow Petitioner to allege that new evidence exists.</p> <p>Item 5 should state “When petitioner was sentenced, the judge did not consider all of the circumstances of suffering from the above health conditions as mitigating factors.” Item 5 should state “as mitigating factors.” It is not enough that the judge considered the health condition if it was not considered as a mitigating factor. It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD or other mental health condition.</p>	<p>The committee agrees with this suggestion and will add a new item for the petitioner to indicate if they have new evidence about a health condition that was discovered after sentencing.</p> <p>The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.</p>
2.	Orange County Public Defender	AM	The proposed form fails to remedy the concern expressed in <i>People v. Valliant</i> because it does	The committee agrees with this suggestion and will add a new item for the petitioner to indicate if

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SPR23-34

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

All comments are verbatim unless indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
<p>By Adam Vining, Assistant Public Defender</p>		<p>provide a way for Petitioner to allege the discovery of new evidence after the sentencing. For example, at sentencing the court may have considered defendant’s mental health problems. Subsequent to the sentencing, the mental health problems have worsened and also may have been linked to military service by the VA. If Petitioner checks “mental health problems” in item 4 and checks item 5, the court might erroneously deny the petition without realizing that new evidence exists. The form should add an item to allow Petitioner to allege that new evidence exists.</p> <p>Item 5 should state “When petitioner was sentenced, the judge did not consider all of the circumstances of suffering from the above health conditions as mitigating factors.”</p> <p>Item 5 should state “as mitigating factors.” It is not enough that the judge considered the health condition if it was not considered as a mitigating factor. It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD or other mental health condition. Reference to “resulting from petitioner’s military service” is duplicative of Item 4 and should be deleted from Item 5.</p>	<p>they have new evidence about a health condition that was discovered after sentencing.</p> <p>The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the judge did not consider the circumstance of suffering from all of the above health conditions.</p> <p>The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.</p> <p>The committee prefers to keep the language in item 5 for clarity.</p>

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SPR23-34

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

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
3.	Hon. Eileen C. Moore Associate Justice Court of Appeal, Fourth Appellate District, Division Three	NI	<p>COMMENT #1:</p> <p>On the proposed form, item 5 states: 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.</p> <p>My comment about item 5: The statute, Penal Code 1170.91 (b)(1) requires that the sentencing court did not consider the health condition “as a factor in mitigation at the time of sentencing.” It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD. For that reason, I suggest the form somehow make it clear that the sentencing court considered the health condition as a mitigating factor.</p> <p>COMMENT #2:</p> <p>On the proposed form, item 5 states: 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.</p>	<p>Thank you for reviewing and submitting a comment for this proposal.</p> <p>The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-34

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

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	Commenter	Position	Comment	Committee Response
			<p>My comment about item 5: The statute, Penal Code 1170.91 (b)(1) states . . .to request resentencing if 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 factor in mitigation at the time of sentencing.</p> <p>In order to fully explain my concern about the proposed language on the form, I refer to the case of <i>People v. Valliant</i> (2020) 275 Cal.Rptr. 3d 221.</p> <p>Valliant, a veteran, was sentenced in 2015. The reality is that it sometimes takes the VA years to diagnose a veteran’s condition. As Justice Liu noted: “In fact, it was not until 2017 that the United States Department of Veterans Affairs (VA) verified that his conditions stemmed from his military service.”</p> <p>So, a defendant/veteran may have some evidence he/she is suffering from one of the listed health conditions, just as Valliant did in 2015. And the sentencing court might have considered it, but something more about the condition is revealed later, just as the circumstance in <i>Valliant</i>. This kind of situation, that is learning more about the circumstances, is not at all unusual in that some veterans go to</p>	

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SPR23-34

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

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	Commenter	Position	Comment	Committee Response
			<p>non-VA professionals who suspect one of the listed health conditions, but don't have enough experience in military trauma to emphatically pronounce a diagnosis.</p> <p>Also notice that Valliant suspected he had PTSD in 2015, but when that diagnosis was confirmed by the VA in 2017, the VA also concluded he had an opioid disorder stemming from military service.</p> <p>I suggest the form have language that better states what the statute states, perhaps something like: When petitioner was sentenced, the judge did not consider the circumstance of suffering from any or all of the above health conditions resulting from petitioner's military service as a factor in deciding the sentence.</p>	<p>The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the judge did not consider the circumstance of suffering from all of the above health conditions.</p>
4.	Angelica Rivera Senior Defense Attorney Fresno County Public Defender's Office	A	No specific comment.	Thank you for reviewing and submitting a comment for this proposal.
5.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	<p>Agree with the proposed changes; modification to item 5, removing DOB, and removing/replacing item 6.</p> <p>No cost savings as this form is printed as needed. Procedures and processes have already been modified/implemented.</p>	Thank you for reviewing and submitting a comment for this proposal.
6.	James Glenn Valliant Costa Mesa, California	NI	I have no issue or comment on substantive changes proposed so far to the form. My first	Thank you for reviewing and submitting a comment for this proposal.

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SPR23-34

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

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>comment is on making the form and process as simple as possible for incarcerated Veterans who might be using it. Due to changes made to the law, there potentially will now be Veterans incarcerated for decades eligible. These Veterans may have little to no outside help and may possibly be somewhat compromised in their ability to fend for themselves. With that in mind:</p> <p>1) Would it be possible to add one more item indicating / asking if the Veteran would like to have counsel assigned? Some Veterans may not be aware this is available to them. I suspect most will need and want that legal assistance. Making it plain to them would be helpful.</p> <p>My final comment is on narrative and background discussion contained in both SPR23-34 and W23-05. I have noticed that a substantial change SB1209 made to PC1170.91 has gone largely unnoticed and has not been properly described. The statement Senate Bill 1209 “add(ed) exclusions for petitioners convicted of specified serious and violent felonies and offenses requiring sex offender registration” is an incorrect description of what the bill did. To clarify;</p> <p>The bill did not “add” such exclusions. Those individuals were never eligible under PC1170.91. PC1170.91 in its previous form</p>	<p>Because this would be a substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider this suggestion during a future proposal cycle.</p> <p>The committee appreciates the comment. The committee will note in its report recommending these revisions that Senate Bill 1209 amended Penal Code section 1170.91 to allow resentencing for persons with indeterminate sentences, with specified exceptions.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-34

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

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>stated “as a factor in mitigation when imposing a term under <i>subdivision (b) of Section 1170</i>”. That language excluded all indeterminate sentenced Veterans from eligibility. SB1209 removed “when imposing a term under subdivision (b) of Section 1170” and changed the language to “as a factor in mitigation when imposing a sentence” thereby <i>adding</i> indeterminate sentenced Veterans to eligibility. The exclusionary language regarding specified felonies / sex registrants was included to define which indeterminate sentences were <i>now being added</i> to eligibility.</p> <p>I am not parsing words; in my opinion the addition to eligibility is a point that needs clarification to petitioners and attorneys and the courts as it importantly adds this class of indeterminate sentenced Veterans. It is incumbent on us to do what we can to make all involved aware that this new group of Veterans now have this opportunity. Your language and narrative fails to do that. In the process of designing and negotiating language for the legislation we had extensive discussion on this exact topic.</p> <p>2) I request the Committee amend and clarify narrative to state “Senate Bill 1209 expands sentencing and resentencing eligibility to indeterminate sentenced veterans except those convicted of specified serious and violent</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-34**Criminal Procedure: Petition for Resentencing Based on Health Conditions From Military Service**

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	Commenter	Position	Comment	Committee Response
			felonies and offenses requiring sex offender registration” I do not have a suggestion regarding how that information might be incorporated into the petition itself. If possible doing so would be helpful for the purpose of bringing awareness to potential petitioners. Perhaps the Judicial Council and Committee can give thought and consideration to how that might be accomplished?	It is the committee’s position that new item #6, which states the specific offenses that are excluded from relief, will assist petitioners with determining whether they may be eligible for relief, regardless of whether the sentence was determinate or indeterminate.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated