



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Criminal Procedure: Petition for Resentencing (Military)

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Rules, Forms, Standards, or Statutes Affected

Approve form CR-412/MIL-412

Date of Report

September 24, 2019

Recommended by

Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends approval of 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. Due to a pending bill (Assem. Bill 581 (2019–2020 Reg. Sess.)) that would affect one element of the form, the committee is submitting alternate forms to the council and recommending that the appropriate form go into effect depending on whether AB 581 is enacted.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Approve *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), only if AB 581 is *not*

enacted, to be used by individuals who were sentenced before January 1, 2015 to petition for resentencing under Penal Code section 1170.91.

2. Approve *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), only if AB 581 is enacted, to be used by individuals to petition for resentencing under Penal Code section 1170.91, regardless of the date of the original sentence.
3. The form that does not become effective on January 1, 2020, is not approved for any use.

The new form is attached at page 5, with the alternate version incorporating statutory changes proposed by AB 581 on page 6.

Relevant Previous Council Action

At its October 2013 meeting, the Judicial Council approved an optional form, *Notification of Military Status* (form MIL-100), to facilitate a court's 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. The form was subsequently amended to reflect legislation directing courts to inform criminal defendants at arraignment of laws designed for former or current military service members.

At its October 2015 meeting, the Judicial Council approved optional forms to facilitate implementation of Penal Code section 1170.9(h), legislation authorizing courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Analysis/Rationale

AB 2098 (Stats. 2014, ch. 163) enacted Penal Code section 1170.91 (see Link A), which requires courts to consider enumerated health conditions resulting from military service as a mitigating factor in felony sentencing. AB 2098 did not, however, apply to veterans convicted prior to January 1, 2015. AB 865 (see Link B) expanded the mitigating provisions of section 1170.91 to apply to veterans convicted of felonies prior to January 1, 2015, by allowing those veterans to petition for resentencing if they suffered from an enumerated health condition as a result of military service, and it was not considered as a factor in mitigation at the time of sentencing.

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; see Link C.) 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).

The Criminal Law Advisory Committee recommends an optional petition form since many of the AB 865 petitions for resentencing will be filed by *pro se* defendants, most of whom will be incarcerated and suffering from mental health problems. The committee consulted with the Veterans Subcommittee of the Collaborative Justice Courts Advisory Committee in developing the form. The subcommittee recommended developing a form and provided thoughtful feedback.

AB 581 and alternate forms

While the form circulated for public comment, the Legislature considered AB 581 (see Link D), which would amend section 1170.91 to allow a defendant to petition for resentencing without regard to whether the defendant was sentenced prior to January 1, 2015, and would clarify that relief is available whether or not there was argument or evidence about the defendant's condition at trial. If AB 581 becomes law, it will become effective January 1, 2020, and optional form CR-412/MIL-412 would have to be revised to take out item #6, a checkbox to indicate that the petitioner was sentenced before January 1, 2015. In order to assure that an appropriate version of the form becomes effective, the committee has drafted alternate versions of the form, at pages 5 and 6, to reflect a form based on current law and a form based on changes proposed by AB 581, and has submitted both to the Judicial Council. The committee recommends that the Judicial Council approve the forms so that only the relevant form goes into effect January 1, 2020. This will allow the council to approve the appropriate version of the form and make it available to eligible defendants without waiting for another rules cycle to elapse and will avoid having the council approve a form that is out of date three months before it is to take effect.

Policy implications

The Criminal Law Advisory Committee recommends an optional petition form since many of the AB 865 petitions for resentencing will be filed by *pro se* defendants, most of whom will be incarcerated and suffering from mental health problems. The form will facilitate the process for seeking relief for eligible defendants.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eight comments were received. Two commenters agreed with the proposal, three agreed with the proposal if modified, and three did not indicate a position but appeared to agree with the proposal if modified. The committee revised the standard in response to the comments. The comments raised four main issues, discussed below.

Use by self-represented litigants and attorneys

The proposal requested specific comments on whether the form, which was drafted from a self-represented litigant's perspective, should be modified to include attorney information. Three commenters recommended modifying the form so that attorneys could use the form as well. One commenter recommended that the form should be limited to self-represented litigants, since attorneys could file original pleadings. The committee agreed that the form should be for use by both self-represented litigants and attorneys, noting that many courts prefer the uniformity of a standard form.

Sealing records

The circulated form included a check box for the petitioner to indicate attachment of relevant records or other documents supporting the claim; for example, military records, conviction documents, mental health treatment records, and medical records. The committee requested specific comments on whether the form should describe the process for filing these documents under seal, as they likely contained sensitive information. In response, three commenters stated that there should be more specific information about the process for filing sensitive documents under seal. Another commenter recommended removing the option from the form entirely, as the statute does not require a petitioner to submit evidence in support of the petition at the time of the initial filing. The commenter also noted that if counsel is appointed to represent the petitioner, that counsel may submit relevant evidence appropriately at the hearing. The committee agreed with the recommendation to remove the option to attach relevant records or other documents.

Appointment of Counsel

A commenter recommended that the petition include a request for appointment of counsel, since a defendant in a criminal action has the right to appointed counsel at a resentencing hearing if indigent. Because this would be a substantive change to the proposal, the committee believes public comment should be sought before the recommendation is considered for adoption. The committee intends to consider this recommendation during the next proposal cycle.

Information sheet

The proposal requested specific comments on whether the committee should develop an accompanying information sheet to aid self-represented litigants in filling out the petition and filing it with the court. Five commenters recommended development of an information sheet, largely to provide guidance on how to obtain and file records to support the petition, as well as providing information on eligibility and how to seek legal representation. As discussed, the committee decided to remove the part of the petition regarding the attachment of relevant records, reducing the need for an information sheet. Accordingly, the committee declined to develop an information sheet at this time.

Alternatives considered

In addition to the alternatives considered in response to the public comments, 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.

Attachments and Links

1. Form CR-412/MIL-412 (current law version), at page 6
2. Form CR-412/MIL-412 (AB 581 version), at page 7
3. Chart of comments, at pages 8–24
4. Link A: [Pen. Code, § 1170.91](#), at
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN
5. Link B: [Assem. Bill 865](#), (Stats. 2018, ch. 523) at
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB865
6. Link C: Assembly Committee on Public Safety, Analysis of Assem. Bill No. 865 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, at
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB865
7. Link D: [Assem. Bill 581](#), (2019-2020 Reg. Sess.) at
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB581

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 CURRENT LAW VERSION
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ CDC OR ID NUMBER: _____ DATE OF BIRTH: _____	
PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)	
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.	
CASE NUMBER: _____ FOR COURT USE ONLY DATE: _____ TIME: _____ DEPARTMENT: _____	

Petitioner/counsel declares as follows:

1. ☐ Petitioner is currently serving a sentence for the felony conviction listed below.
☐ Petitioner is currently in jail or prison.
☐ 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

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

- 3A. ☐ 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): _____
- 3B. ☐ 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 health conditions resulting from petitioner's military service as a factor in deciding the sentence.
6. ☐ Petitioner was sentenced before January 1, 2015.

Date: _____



SIGNATURE OF PETITIONER/DEFENDANT OR ATTORNEY

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

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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 AB 865 VERSION
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ CDC OR ID NUMBER: _____ DATE OF BIRTH: _____	
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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.	
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- 3B. ☐ 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 health conditions resulting from petitioner's military service as a factor in deciding the sentence.

Date: _____



SIGNATURE OF PETITIONER/DEFENDANT OR ATTORNEY

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

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SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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

	Commenter	Position	Comment	Committee Response
1.	Samuel Caez Avenal State Prison Avenal, California	N/I	<p>1. I do believe the proposal addresses the stated purpose clearly.</p> <p>2. The form I feel can be understood by intended users, veterans in custody with qualifying health conditions.</p> <p>3. The fact that it is drafted for both attorneys and self-represented litigants is a good thing. This does give eligible veterans the option of acquiring representation if so needed or desired.</p> <p>4. The title of the form is clear enough to state that veterans are eligible for the mentioned health conditions.</p> <p>5. The term “health condition” is a good way to word the umbrella in which the conditions are listed. I say that because it takes a bit of the stigma which comes with being labeled mentally ill. Due to pride some eligible veterans may not file if they are to be labeled “mentally ill.” Plus, I am guessing that this form will be one which will become public record. Being that it can be viewed by everybody this could further hinder a veteran’s ability to gain employment in order to successfully reintegrate back into society.</p> <p>6. Being that mental health and medical records will need to be provided with this form, it would be very helpful to receive</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
		N/I	<p>information as to how to file these under seal. It would be good to include either the forms needed along with CR-412/MIL-412 or the form numbers. The issue when incarcerated is the lack of resources. I have written the court in my county to request forms or information but only received a letter back telling me to retain an attorney since they provide no legal assistance to inmates. I have also requested the same information from the public defender's office for this AB 865 but have not received a reply. I do not want to suggest that veterans are dumb but when it comes to legal terms and different processes I know most people as a whole tend to be ignorant. It would be nice/helpful to receive instructions in layman terms. I personally get lost when a process begins to use legal terms, most of which I am unfamiliar with.</p> <p>7. As mentioned above, the information sheet would be very helpful. The only place to get any information here is the library. It is unfortunate that they are limited as well. If one does not know the forms needed, it is like attempting to find a needle in a hay's stack. Plus, there is a per page charge for any type of legal copy one requires.</p>	<p>and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.</p> <p>The committee is removing the part of the form requesting submission of relevant records along with the petition, reducing the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.</p>

SPR19-20

Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
2.	Glenn Valliant Costa Mesa, California	AM	<p>The form and the title are understandable and easy enough to use by self-represented defendants.</p> <p>The phrase “Health Condition” may invite submissions for non-qualifying conditions. “Mental Health Conditions” appears to be what the law specifies and you list on the form. I prefer “Mental Health Conditions”, with an additional check box “other” and space to specify. We want to encourage as many as possible to try for resentencing, but discourage those clearly ineligible.</p> <p>An info form should definitely be developed to accompany this with suggested additions (and explanations in the info form</p> <ol style="list-style-type: none">1. PC1170.91 resentencing should only be filed if the defendant received mid or max sentence on at least one charge or received an enhancement that might be struck or dismissed by the court. If defendant received minimum term and no sentence enhancement they cannot receive relief. This is not clear.<ol style="list-style-type: none">a. The form should include column indicating sentence defendant received for each offenseb. The form should instruct and indicate any sentence	<p>No response required.</p> <p>The committee prefers the phrase “health condition” to more accurately capture the enumerated conditions listed in Penal Code section 1170.91(b).</p> <p>In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time as the petition only asks for basic qualifying information.</p> <p>The committee prefers that the petition request basic qualifying information.</p> <p>The committee prefers that the petition request basic qualifying information.</p>

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	Commenter	Position	Comment	Committee Response
			<p>enhancement defendant received.</p> <p>2. Box 7 is checked if documents and records are included as evidence. This should be encouraged in the info form explaining that including records could significantly improve petitioners potential for success.</p> <p>a. I fully agree with your comment “form also mention the process for filing those documents under seal”. This would be important and helpful to them.</p> <p>b. I suggest the info form also provide brief recommendations/ instructions on “process for obtaining those documents”. Requesting medical records (psychiatric / mental) from CDCR. Mailing to and requesting medical records from VA Medical Center (with addresses).</p> <p>c. Recommend defendant review documents and include any pages found that specifically address conditions under PC1170.91</p>	<p>In response to comments, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records because the statute does not require supporting documentation with the initial filing of the petition.</p>

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	Commenter	Position	Comment	Committee Response
3.	Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender Los Angeles County Alternate Public Defender by Erika Anzoategui, Acting Alternate Public Defender	NI	<p>Although the form is written primarily for self-represented litigants, we do not feel that attorney information should be excluded. This would allow both attorneys and self-represented litigants to use the same form. For example, “I (add check box for counsel for or pro per) , (counsel for) , the defendant in the above-entitled case...” is preferred over the current language. A signature line including designation of counsel should be added.</p> <p>The title appears to adequately describe the purpose of the form. The term “Health Conditions” is more favorable than “Health Problems.”</p> <p>An “INFO” form with basic explanations would be helpful for self-represented litigants. For example, explaining filing under seal or giving the self-litigant the option to seek legal explanation for such filings.</p>	<p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>No response required.</p> <p>In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
4.	Orange County Bar Association by Deirdre Kelly, President	AM	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, but see below.</p> <p><i>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?</i> Yes, the form is sufficiently clear to be understood by an unrepresented criminal defendant who may qualify for relief. However, the form does not address a fundamental question nearly all petitioners will have—how do I get legal representation to guide me through this process? Since this is a petition for resentencing, and because a defendant in a criminal action has the right to appointed counsel at a sentencing hearing if indigent, the form should contain a mechanism which allows the defendant to request counsel. We recommend the following:</p> <p>If the court sets a hearing on this petition, I request counsel be appointed to represent me. (check one)</p> <p>I was represented by a court-appointed attorney in this case</p> <p>I either represented myself or was represented by a private attorney in this case but am now requesting the court appoint an attorney. If you check this</p>	<p>No response required.</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 the next proposal cycle.</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
			<p>box, please attach form MC-210 [Defendant's Financial Statement]</p> <p><i>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'm 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?</i></p> <p>The form should be limited to use by self-represented litigants. We believe the purpose of the form is to create a workable, simple document that self-represented litigants can use to petition the court for consideration under section 1170.91. However, as with nearly all forms, the form itself is limiting by its nature and is not the best way for attorneys to practice law. Attorneys, their clients and the judicial officers hearing these cases would be better served by robust, original pleadings that clearly spell out why relief is warranted based on the evidence submitted at the hearing. Criminal defense attorneys do this on a regular basis at felony sentencing hearings. There is no reason why it should be any different at a re-sentencing hearing under section 1170.91.</p>	<p>The committee discussed the suggestion and decided to draft the form so that both attorneys and self-represented litigants could use the same form, as courts prefer the uniformity of a standard form.</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
			<p><i>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?</i></p> <p>We express no opinion on this point.</p> <p><i>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?</i></p> <p>Rather than try to explain procedures for filing confidential documents under seal to self-represented litigants, the better practice would be to remove this option from the form entirely. The statute does not require a petitioner to submit evidence in support of the petition but does require the court to set a hearing at the time the petition is received. That hearing is when the petitioning party should submit evidence to the court. We hope the Criminal Law Advisory Committee gives serious consideration to modifying the form to include an application for appointed counsel, as suggested above. Were that to happen, appointed counsel could move the court to seal confidential records at the hearing.</p> <p><i>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?</i></p>	<p>No response required.</p> <p>The committee agrees with these suggestions and has incorporated them into the amendments that it is recommending for adoption.</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
			Yes. However, we suggest the form also inform potential self-represented litigants that many Public Defender Offices will represent them in these proceedings if they are indigent and encourage them to contact the Public Defender's Office in the county of conviction prior to filling out the form.	As stated earlier, the committee declines to develop an information sheet at this time.
5.	Superior Court of Los Angeles County	AM	<p>Proposed Modifications Form CR-412/MIL-412</p> <p>The Petition for Dismissal (Military Personnel) (CR-183) should be used as the guide for this form. For example, CR-183 uses the designation of "petitioner," which allows it to be completed by the defendant himself/herself or an attorney acting on the defendant's behalf.</p> <p>- Change "I (name):" to "Petitioner (name):"</p> <p>Information Form: Please add an information form. As the form asks for supplemental documentation including medical records, the information form should provide information regarding the confidentiality of such documents and how those documents should be submitted.</p> <p><i>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?</i> Yes, the form is understandable.</p>	<p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p> <p>The committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.</p> <p>No response required.</p>

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	Commenter	Position	Comment	Committee Response
			<p><i>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?</i></p> <p>Please see our suggested modifications above.</p> <p><i>Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?</i></p> <p>Yes, the title is clear.</p> <p><i>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?</i></p> <p>Yes, "health conditions" is the best term.</p> <p><i>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?</i></p> <p>As noted above, an Information Sheet would be most helpful for this proposal.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p>	<p>See response above.</p> <p>No response required.</p> <p>No response required.</p> <p>See response above.</p>

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	Commenter	Position	Comment	Committee Response
			<p>We do not anticipate cost savings. The petitions will add to the Criminal Division's workload.</p> <p><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></p> <p>Changes to the Case Management System will be needed. As this involves resentencing, Court Order/Finding (COF) codes would need to be created. In addition, event codes would need to be created for the filing of the petition and the hearing of the petition at a minimum. Training would then be required.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Due to the changes required above, three months would not be enough time for implementation.</p>	<p>No response required.</p> <p>No response required.</p> <p>Based on the other comments received, the committee proposes a three month timeframe from Judicial Council approval to its effective date.</p>
6.	Superior Court of Orange County	N/I	<p><i>Does the proposal appropriately address the stated purpose? Yes.</i></p> <p><i>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? Yes.</i></p>	<p>No response required.</p> <p>No response required.</p>

SPR19-20**Petition for Resentencing (Military) (CR-412/MIL-412)**

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	Commenter	Position	Comment	Committee Response
			<p><i>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?</i></p> <p>Form should include verbiage so that both proper defendants and attorneys can complete and submit.</p> <p>I, (name) _____, the <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant in the above-entitled case, declare as follows:</p> <p>1. <input type="checkbox"/> Defendant is currently serving a sentence for the felony conviction listed below.</p> <p><input type="checkbox"/> Defendant is currently in jail or prison. <input type="checkbox"/> Defendant is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of this conviction.</p> <p>2. <input type="checkbox"/> On (date of conviction): _____, defendant was convicted of the following felony offenses:</p>	<p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.</p>

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	Commenter	Position	Comment			Committee Response
			Code	Section	Name of offense	
					<p>3A. <input type="checkbox"/> Defendant was a member of the U.S. military. Defendant served in (<i>branch of military</i>): _____ from (<i>date of entry into military</i>): _____ until (<i>last date served in the U.S. military</i>): _____</p> <p>3B. <input type="checkbox"/> Defendant is currently a member of the U.S. military. Defendant serves in (<i>branch of military</i>): _____ and defendant's entry date was: _____</p> <p>4. <input type="checkbox"/> Defendant believes that as a result of his/her military service, he/she is a person who may be suffering from the following health conditions (<i>check all that apply</i>):</p> <p><input type="checkbox"/> Sexual trauma</p> <p><input type="checkbox"/> Traumatic brain injury (TBI)</p> <p><input type="checkbox"/> Post-traumatic stress disorder (PTSD)</p> <p><input type="checkbox"/> Substance abuse</p> <p><input type="checkbox"/> Mental health problems (<i>list or describe</i>): _____</p> <p>5. <input type="checkbox"/> Defendant believes that, at the time of sentencing, the judge did not consider his/her health condition resulting from his/her military service as a factor in deciding the sentence.</p>	

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			<p>6. <input type="checkbox"/> Defendant was sentenced before January 1, 2015.</p> <p>7. <input type="checkbox"/> Relevant records or other documents supporting this claim are attached (for example, military records, conviction documents, mental health treatment records, medical records).</p> <p>I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date: _____</p> <p>_____ (Type or print name) Signature of Petitioner</p> <p><i>Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?</i> Yes, however they will need to read section 4 of the form or familiarize themselves with 1170.91(b) before determining if their specific health condition is included. Also suggest changing title to “Petition For Resentencing Based On Health Conditions Due To Military Service...”</p> <p><i>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?</i> Health Conditions is an adequate descriptor.</p> <p><i>Given that the form suggests providing supporting documentation, including medical</i></p>	<p>The committee accepts the recommendation.</p> <p>No response required.</p>

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	Commenter	Position	Comment	Committee Response
			<p><i>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?</i></p> <p>Our current procedure directs our clerks to produce barcodes with a “confidential” security level when submitting medical reports/records to be imaged so that the public cannot view or access the document. Adding instructions for the defendant regarding the filing of documents under seal may cause confusion. The defendant might assume that the clerk receiving the documents can “seal” the documents, however only a judicial officer has the authority to order the filing of documents under seal.</p> <p><i>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?</i></p> <p>“INFO” form may not be necessary. The proposed form appears to be straight forward and self-explanatory. The proposed form also references MC-025 if additional space is needed, as well as CR-106 to provide proof of service.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>Creating the form would make it more efficient for defendants/attorneys to submit the request, and for the Court to identify what is being</p>	<p>As explained above, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records.</p> <p>No response required.</p> <p>No response required.</p>

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	Commenter	Position	Comment	Committee Response
			<p>requested. There may be a time savings which could equate to a cost savings.</p> <p><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></p> <p>It depends. There could be a new procedure and/or QRG created. Training Staff could be 5 – 10 minutes per person within Operations. There could be docket codes created or modified.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>3 months should be sufficient, depending on other projects/initiatives in the works.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>This proposal should work for Courts of all sizes. This optional form provides a more efficient way to submit this specific request, however the Court can accept requests in the form of correspondence, pleading paper, etc.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
7.	Superior Court of San Bernardino County	A	<p><i>Would the proposal provide cost savings?</i> No.</p> <p><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</i></p>	No response required.

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	Commenter	Position	Comment	Committee Response
			<p><i>(please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>The implementation requirements to the court would be to train clerk's office staff, judicial officers, and judicial assistants; creating procedures; possibly creating new codes in the case management system.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>The procedure would work, with the biggest impact being volume based on the number of filings at each district.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	No response required.