



Judicial Council of California

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Subject Text

Meeting materials
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File #: 19-194, Version: 1

Title

Rules and Forms | Criminal Procedure: Petition for Resentencing (Military) (Action Required)

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 Assembly Bill 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 Assembly Bill 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 Assembly Bill 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.