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### **Your Responsibility When Using the Information Provided Below:**

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to all who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your facility's law library.

### **VETERANS/MILITARY MEMBERS RESENTENCING LAW**

(Assembly Bill 865; Penal Code 1170.91)

(December 2018)

We are sending you this letter in response to your request for advice or assistance concerning a recent law that allows some former U.S. military members to seek resentencing to lower prison terms. We are not able to provide you with individual advice or assistance. However, we hope that the information in this letter will answer your questions and help you take further action if it appears that you are eligible for resentencing.

Most felonies are punishable by a range of determinate (set length) terms of imprisonment – a low, middle, or high term. As of January 1, 2015, sentencing judges are required to take into consideration trauma, substance abuse, and mental health problems that are a result of a person's service in the U.S. military. A judge must consider such matters as mitigating factors that weigh in favor of sentencing the person to a low term. (Penal Code 1170.9(a).)

Effective January 1, 2018, the law was amended to allow people who were sentenced prior to January 1, 2015 to seek a resentencing in which the Court takes into account circumstances related to military service. This change was made by Assembly Bill 865 and is now set forth in Penal Code § 1170.91(b).

To be eligible for sentencing, you must meet the following criteria:

- You are currently serving a determinate (set length) prison sentence for a felony conviction either by a guilty verdict at trial or by a guilty or no contest plea.
- You served in the U.S. military.
- As a result of your service, you suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems; AND
- You were sentenced prior to January 1, 2015, and the court did not consider your military-related trauma, substance abuse, or mental health problems as a mitigating factor.

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To seek resentencing, you must file a “petition for recall of sentence and resentencing pursuant to Penal Code § 1170.91” in the county superior court where you were sentenced on your criminal case. There currently is no standard form for this type of petition. Prison Law Office cannot help you file a petition. Before you file a petition on your own, you can try to get help by writing to the attorney who represented you in your criminal case, the attorney who handled any direct appeal after you were convicted, and/or the public defender’s office for the county where you were convicted.

In your petition, you should state that you meet each of the Penal Code § 1170.91 criteria for recall of sentence and ask the court to resentence you to a lower term; you can also describe any details about your criminal case, your military service, or your mental health that help show why you should be resentenced.

After you file a petition pursuant to Penal Code § 1170.91, the court is supposed to schedule a public hearing about whether you meet the criteria. The law implies (although § 1170.91 doesn’t specifically say) that if you do not have an attorney, the court will appoint one to represent you at the hearing. The court must give 15 days notice before the hearing to you and your attorney, the prosecution, and any victim of your crime. The hearing should be handled by the judge who sentenced you originally; however, if that judge is not available, another judge may handle the hearing and decide the case.

If the judge decides that you meet the Penal Code § 1170.91 criteria, the judge then has authority to decide whether or not to resentence you. The judge can keep your sentence the same or make it shorter than your original sentence. The judge cannot order a longer sentence.

If the judge resentences you to a lower term, you will get credit for the time you have already served.

The amended law does not require the California Department of Corrections and Rehabilitation to provide medical or mental health evaluations to identify potential military service-related mental health conditions.

This is all we currently know about how the amended law will be put into effect. We will try to update this letter when we have new information about how the law is supposed to be interpreted and applied.