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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

(Penal Code 1170.91)

(revised October 2022)

We are sending you this letter in response to your request for advice or assistance concerning Penal Code § 1170.91, a California law that allows some former U.S. military members to seek resentencing to lower prison terms. We are not able to provide individual advice or assistance. However, we hope that the information in this letter will answer your questions and help you take action if it appears you are eligible for resentencing.

In January 1, 2015, a law took effect that required sentencing judges to consider trauma, substance abuse, and mental health problems that are a result of a person's service in the U.S. military as factors that weigh in favor of sentencing a person to a low term determinate sentence (rather than a middle or high term). (Penal Code § 1170.91(a).)

Effective January 1, 2019, a law was adopted to allow people who were sentenced prior to January 1, 2015 to seek a resentencing to into account circumstances related to their military service. (Assembly Bill No. 865; Penal Code § 1170.91(b).) This law did not allow resentencing for people who were sentenced after January 1, 2015. (See *People v. Valliant* (2020) 55 Cal.App.5th 903.) It did not authorize resentencing of indeterminate (life with the possibility of parole) terms or enhancements. (*People v. Stewart* (2021) 66 Cal.App.5th 416; *People v. Estrada* (2020) 58 Cal.App.5th 839.) It did not allow resentencing for people who had agreed to a specific sentence when they entered a guilty or no contest plea. (*People v. King* (2020) 52 Cal.App.5th 783; *People v. Brooks* (2020) 58 Cal.App.5th 1099; *People v. Pixley* (2022) 75 Cal.App.5th 1002.)

As of January 1, 2023, the law is changing in some important ways. (Senate Bill No. 1209.) Under the new law, a court must consider veteran/military service trauma when making any sentencing decision (not just when selecting a high, middle, or low determinate term). Under the new law: (1) courts can resentence people who were originally sentenced after January 1, 2015; (b) it appears that courts are allowed to act in the interests of justice to resentence people whose original sentence was set by a plea bargain, and (c) courts can either modify the sentence *or* (if the District Attorney agrees) vacate the conviction and resentence the person for a lesser included or lesser related crime. However, the new law states that people are *ineligible* for resentencing if they have a prior or current conviction for a "super strike" crime listed in Penal Code § 667(e)(2)(C)(iv) *or* a crime that requires registration as a sex offender per Penal Code § 290(c).

To be eligible for resentencing consideration under the law that takes effect on January 1, 2023, you must meet all of the following criteria:

- You are currently serving a sentence in jail or prison (or are on parole, PRCS, mandatory supervision or probation) for a felony conviction.
- You do *not* have prior or current conviction for a “super strike” crime listed in Penal Code § 667(e)(2)(C)(iv) *or* for a crime that requires registration as a sex offender per Penal Code § 290(c).¹
- 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
- When you were sentenced, the court did not consider your military-related trauma, substance abuse, or mental health problems as a factor in favor of a lower sentence.

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. If you previously filed a petition and were denied under the law that was in effect prior to January 1, 2023, you can file a new petition after January 1, 2023 if you think the new law makes you eligible for resentencing. There is a standard form you can use for the petition, and a copy of the form is attached to this letter. Note that as of October 2022, the form has not been updated since new law was passed; however, the old version of the form should work to get your case in front of the court.

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.

The petition form asks you to check boxes and fill in basic information about your convictions and military-related trauma. If you want, you can attach a memorandum or supporting documents with any details about your criminal case, your military service, or your mental health that help show why you should be resentenced. However, § 1170.91 does not require you to allege facts about your mental health conditions.

If you file a petition pursuant to Penal Code § 1170.91 stating that you meet the eligibility requirements for resentencing, the court must schedule a hearing. (*People v Bonilla-Bray* (2020) 49

¹ The exclusions of people with super-strike offenses and sex offender registration requirements are not in the law that is in effect up until January 1, 2023. If you think you are eligible for resentencing under the old law -- but you will become ineligible for resentencing under the new law -- you should attempt to protect your rights by immediately (and prior to January 1, 2023) (1) filing a resentencing petition and (2) contacting your criminal case attorney, appeal attorney, and/or the public defender’s office for the county where you were convicted to get advice and assistance about whether you can ask for resentencing under the old version of the law.

Cal.App.5th 234; *People v. Coleman* (2021) 65 Cal.App.5th 817.) The law implies (although doesn't specifically say) that if you do not have an attorney, the court will appoint an attorney to represent you at the hearing. The court must give 15 days notice before the hearing to you and your attorney, the District Attorney, and any victims of your crimes. The hearing should be handled by the judge who sentenced you originally, but another judge may handle the case if the original judge is not available.

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 resentsences you to a lower term, you will get all your actual and good conduct/programming credits for the custody 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.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
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.

1 What does this information sheet cover?

This information sheet tells you how to use and fill out *Proof of Service—Criminal Record Clearing* form CR-106. This information sheet does not need to be copied, served (delivered), or filed.

2 What is proof of service?

- A “proof of service” is a form used in legal cases.
- If you want a judge to look at your case, you or someone who is helping you has to file certain documents in court.
- You also have to give or mail copies of those documents to the other party in the case, usually the prosecutor.
- The proof of service has spaces for you or someone who is helping you to write in when, where, and how the other party got the documents.
- Once the proof of service is filled out and filed with the court, it shows the court that the other party got the documents.

3 What is record clearing?

- Record clearing is a process that allows you to ask a court to improve your criminal record.
- For example, a court may be able to change some convictions from felonies to misdemeanors.
- You can start the process of record clearing by filing certain documents or forms called “applications,” “petitions,” or “motions.”

4 Who do I need to serve when I ask a court to clear my criminal record?

Most record clearing laws say you have to let the prosecuting agency (usually the district attorney) know about the record clearing request. Sometimes you also have to let law enforcement (like the police or sheriff) or other parties know about your request. You can do so by “serving” (delivering) a copy of the papers you filed with the court on the prosecuting agency or other parties. Read the record clearing law you are basing your request on carefully to see who needs to know about your record clearing request. Those are the parties who must be served.

5 Why do I need to file a proof of service?

Filing a proof of service shows the court that you have let the other parties know about the record clearing request by giving them a copy of the document or form you are using to make a record clearing request to the court.

6 When can I use *Proof of Service—Criminal Record Clearing* (form CR-106)?

Proof of Service—Criminal Record Clearing (form CR-106) is intended to be widely used with **any** record clearing request that requires notification or service of the request to the prosecuting agency and other parties, such as the following optional Judicial Council forms for record clearing:

- *Petition for Dismissal* (form CR-180), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, and 1203.49, and reductions under Penal Code sections 17(b) and 17(d)(2)
- *Petition for Dismissal (Military Personnel)* (form CR-183), dismissals under Penal Code section 1170.9(h), and reductions under Penal Code section 17(b)
- *Motion to Vacate Conviction or Sentence* (form CR-187), vacating convictions under Penal Code sections 1016.5 and 1473.7
- *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-400), relief under Proposition 64 for specified marijuana-related convictions
- *Petition/Application for Resentencing and Dismissal* (form CR-404), resentencing and dismissal under Penal Code section 1170.22
- *Petition to Seal Arrest and Related Records* (form CR-409), sealing under Penal Code section 851.91
- *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412)
- *Petition for Writ of Habeas Corpus* (form HC-001)

7 Who can serve the petition or motion?

- In most cases, the law allows you (the person who is filing the record clearing request) to serve the document or form.
- You can also ask someone else to serve the document or form.
- The person who serves a document or form for record clearing and fills out the *Proof of Service—Criminal Record Clearing* (form CR-106) must be at least 18 years old.
- Read the record clearing law you are basing your request on carefully to see if it sets any other requirements for who can serve the request.

8 When are the other parties served, and when do I file a proof of service?

- Ask the court clerk if any local filing rules apply.
- In most cases, the other parties should be served *after* the original document or form is filed with the court. That way, the court may add helpful information to the document or form, such as a hearing date.
- Some courts require that the document or form is first served on the other parties, and then the original document or form is filed with the court, along with a completed and signed proof of service.
- When you file the document or form with the court, take the original plus at least two copies of your documents.
 - The court will keep the original.
 - The clerk will stamp your copies “Filed” and return them to you. Keep one copy for your records.
 - The other parties can be served with a copy of your court-stamped document or form, and then you should file the proof of service with the court after the parties are served.

9 How should the petition or motion be served?

There are three main ways to serve documents: by **mail**, **personal delivery**, or **electronic service**. *Proof of Service—Criminal Record Clearing* (form CR-106) can be used to prove service by mail or personal delivery.

If serving electronically:

- Do not use *Proof of Service—Criminal Record Clearing* (form CR-106).
- Carefully read and follow the requirements in California Rules of Court, rule 2.251, and use *Proof of Electronic Service* (form POS-050/EFS-050).

If someone else is serving documents on your behalf, make sure to provide them with the name of the agency that must be served (for example, San Francisco County District Attorney), the agency’s address, and a copy of the document or form.

If serving by mail:

- The server should put one copy of the document or form in an envelope addressed to the agency, seal the envelope, and place first-class postage on the envelope; and
- The server should mail the document or form by depositing the envelope at a post office or mailbox or by depositing the envelope at an office or business mail drop where the server knows mail is picked up every day by the postal service.

If serving by personal delivery:

- The server should give the document or form to a person with the agency and note the name of the person, as well as the address, date, and time of the service.

Once the document or form has been served on the other parties by mail or personal delivery, the server should fill out and sign the proof of service form.

10 What do I do with *Proof of Service—Criminal Record Clearing* (form CR-106) once it is filled out?

You should file a completed proof of service with the court where you filed your document or form. Ask the court clerk if any local filing rules apply.

Clerk stamps date here when form is filed.

Instructions

- Before using this form, read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO).
- This form is only for providing proof that a document or form was served (delivered) in a case requesting that a court review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other **record clearing remedy**.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, use *Proof of Electronic Service* (form POS-050/EFS-050).
- A completed form should be filed with the court. Keep a copy of this form for your records.

Fill in court name and street address:

Superior Court of California, County of

Fill in criminal case number and case name:

Case Number:

Case Name:

People of the State of California

v.

- ① At the time I served the document or form listed below, I was at least 18 years old.

- ② My ☐ home ☐ business address is:

Street City State Zip

- ③ I mailed or personally delivered the following document or form (fill in the name of the document you are serving and complete ④ or ⑤):

④ **Service by mail**

- (a) I put one copy of the document or form in an envelope addressed to each agency (and person, if applicable) listed below, sealed the envelope, and put first-class postage on the envelope.

- (b) The envelope or envelopes were addressed as follows:

- (1) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

- (2) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

- ☐ Check here if you mailed copies of the document or form to more people or agencies. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "CR-106, Item 4" on the top of the page.

- (c) I mailed the envelope or envelopes on (date): from (city): (state):
by depositing the envelope or envelopes (check one):

- (1) ☐ With the U.S. Postal Service.

- (2) ☐ At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

5 Service by Personal Delivery

I personally gave one copy of the document or form to each of the following:

(a) Name of person and agency served:

(1) Address where you gave the document or form to this person:

Street *City* *State* *Zip*

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

(b) Name of person and agency served:

(1) Address where you gave the document or form to this person:

Street *City* *State* *Zip*

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

☐ *Check here if you gave copies of the document or form to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document or form, and the date and time you gave them the document or form. Write "CR-106, Item 5" on the top of the page.*

6 I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

Type or print server's name

▶ _____
Server signs here after serving