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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give 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 April 2025)

We are sending 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 may be eligible for resentencing.

Short History of California Law Regarding Veterans and Resentencing

On 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 the person to a low-term determinate sentence (rather than a middle or high term). This law is Penal Code § 1170.91(a). Effective January 1, 2019, Assembly Bill No. 865 amended the law to allow some people who were sentenced prior to January 1, 2015 to seek recall and resentencing to take into account circumstances related to their military service. The law was amended again by Senate Bill No. 1209, which went into effect on January 1, 2023, requiring courts to consider veteran/military service trauma when making *any* type of sentencing decision and changing the criteria about who can seek resentencing.

Current California Law Regarding Veterans and Resentencing

Under the current version of Penal Code § 1170.91, some former U.S. military members are allowed to seek resentencing. To be eligible for resentencing, a person must meet all of the following criteria:

- They served in the U.S. military

- As a result of service in the U.S. military, they suffer from any of the following conditions:
 - Sexual trauma
 - Traumatic brain injury
 - Post-traumatic stress disorder
 - Substance abuse
 - Mental health problems
- When they were sentenced, the court did not consider their military-related sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problem as a factor in favor of a lower sentence
- They are currently serving a sentence in jail or prison (or are on parole, PRCS, mandatory supervision, or probation) for a felony conviction
- They do *not* have any prior or current convictions for a crime listed in Penal Code § 667(e)(2)(C)(iv) (“super strikes”)
- They do *not* have any prior or current conviction requiring registration as a sex offender pursuant to Penal Code § 290(c).

The current version of Penal Code § 1170.91 applies both to sentences imposed after January 2023 and retroactively to sentences imposed before January 2023. Under the law, courts are permitted to act in the interest of justice to resentence anyone who meets the criteria regardless of whether the original sentence was imposed after a trial or after a plea bargain.¹ A court can either modify and reduce the sentence *or* (if the District Attorney agrees) vacate the conviction and resentence the person for a lesser included or lesser related crime.

Note that the 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.

How To Request / Petition for Resentencing as a Veteran

To seek resentencing, a person must file a “petition for recall of sentence and resentencing pursuant to Penal Code § 1170.91” in the county superior court where they were sentenced on their criminal case. If a person previously filed a petition and was denied resentencing under the law that was in effect prior to January 1, 2023, they can try filing a new petition if they think the new law changes their eligibility for resentencing.

¹ *People v. Harrell* (2023) 95 Cal.App.5th 161.

There is a standard court form for the petition, and a copy of that form is attached to this letter. The petition form asks the person who is preparing the petition to check boxes and fill in basic information about the petitioner's convictions and military-related trauma. However, the form does not require a person to provide specific facts about mental health conditions. A person also can attach a memorandum or supporting documents with details about the criminal case, military service, suffering experienced as a result of military service, or mental health history that help show why the court should grant resentencing.

Prison Law Office cannot help you fill out or file a Penal Code § 1170.91 petition. You can try to get help with a petition 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.

Petitions for Resentencing by Veterans: What the Superior Court does

Penal Code § 1170.91 includes some rules about what is supposed to happen if a person files a petition stating that they meet the Penal Code § 1170.91 criteria for resentencing. The court must schedule a hearing.² The law implies (although doesn't specifically say) that if a person does not have an attorney, the court will appoint an attorney to represent them. The court must give 15 days notice before the hearing to the petitioner and their attorney, the District Attorney, and any victims of the crimes. The hearing should be handled by the judge who imposed the original sentence, but another judge may handle the case if the original judge is not available.

In addition, Penal Code § 1171 sets forth procedures that courts are supposed to follow during "postconviction proceedings." Those procedures include a requirement that, upon request by either the petitioner or the District Attorney, CDCR shall provide any relevant non-confidential documents that are in the CDCR's records. Records that CDCR deems to be confidential may be redacted by before CDCR provides them. Either side may file a motion asking the court to consider ordering CDCR to release information that has been redacted.

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

If the judge resentences someone to a lower term, they should get all their actual and good conduct/programming credits for the custody time they have already served.

enc: Penal Code § 1170.91 petition form

² *People v Bonilla-Bray* (2020) 49 Cal.App.5th 234; *People v. Coleman* (2021) 65 Cal.App.5th 817.

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

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