

ASSEMBLY BILL

No. 2371

Introduced by Assembly Member Butler

February 24, 2012

An act to amend Section 1170.9 of the Penal Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2371, as introduced, Butler. Veterans: criminal defendants: mental health issues and restorative relief.

Existing law requires a court, in the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, to, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service. If the court concludes that a defendant convicted of a criminal offense is such a person, and if the defendant is otherwise eligible for probation and the court places the defendant on probation, existing law authorizes the court to order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

This bill would authorize a court to grant restorative relief to a criminal defendant who comes within the description set forth above

if the court finds, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense that the defendant meets specified criteria, including that he or she does not represent a danger to the health and safety of others. The bill would authorize the court to take any of specified actions, including deeming all conditions of probation, except victim restitution, to be satisfied, including fines, fees, assessment, and programs, and terminating probation prior to the expiration of the term of probation, reducing a felony to a misdemeanor, as specified, setting aside the conviction and dismissing the action, or providing other specified relief. The bill would provide that a dismissal of the action pursuant to these provisions releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170.9 of the Penal Code is amended to
2 read:

3 1170.9. (a) In the case of any person convicted of a criminal
4 offense who could otherwise be sentenced to county jail or state
5 prison and who alleges that he or she committed the offense as a
6 result of sexual trauma, traumatic brain injury, post-traumatic stress
7 disorder, substance abuse, or mental health problems stemming
8 from service in the United States military, the court shall, prior to
9 sentencing, make a determination as to whether the defendant was,
10 or currently is, a member of the United States military and whether
11 the defendant may be suffering from sexual trauma, traumatic
12 brain injury, post-traumatic stress disorder, substance abuse, or
13 mental health problems as a result of that service. The court may
14 request, through existing resources, an assessment to aid in that
15 determination.

16 (b) If the court concludes that a defendant convicted of a
17 criminal offense is a person described in subdivision (a), and if
18 the defendant is otherwise eligible for probation and the court
19 places the defendant on probation, the court may order the
20 defendant into a local, state, federal, or private nonprofit treatment
21 program for a period not to exceed that which the defendant would

1 have served in state prison or county jail, provided the defendant
2 agrees to participate in the program and the court determines that
3 an appropriate treatment program exists.

4 (c) If a referral is made to the county mental health authority,
5 the county shall be obligated to provide mental health treatment
6 services only to the extent that resources are available for that
7 purpose, as described in paragraph (5) of subdivision (b) of Section
8 5600.3 of the Welfare and Institutions Code. If mental health
9 treatment services are ordered by the court, the county mental
10 health agency shall coordinate appropriate referral of the defendant
11 to the county veterans service officer, as described in paragraph
12 (5) of subdivision (b) of Section 5600.3 of the Welfare and
13 Institutions Code. The county mental health agency shall not be
14 responsible for providing services outside its traditional scope of
15 services. An order shall be made referring a defendant to a county
16 mental health agency only if that agency has agreed to accept
17 responsibility for the treatment of the defendant.

18 (d) When determining the “needs of the defendant,” for purposes
19 of Section 1202.7, the court shall consider the fact that the
20 defendant is a person described in subdivision (a) in assessing
21 whether the defendant should be placed on probation and ordered
22 into a federal or community-based treatment service program with
23 a demonstrated history of specializing in the treatment of mental
24 health problems, including substance abuse, post-traumatic stress
25 disorder, traumatic brain injury, military sexual trauma, and other
26 related mental health problems.

27 (e) A defendant granted probation under this section and
28 committed to a residential treatment program shall earn sentence
29 credits for the actual time the defendant serves in residential
30 treatment.

31 (f) The court, in making an order under this section to commit
32 a defendant to an established treatment program, shall give
33 preference to a treatment program that has a history of successfully
34 treating veterans who suffer from sexual trauma, traumatic brain
35 injury, post-traumatic stress disorder, substance abuse, or mental
36 health problems as a result of that service, including, but not limited
37 to, programs operated by the United States Department of Defense
38 or the United States Veterans Administration.

39 (g) The court and the assigned treatment program may
40 collaborate with the Department of Veterans Affairs and the United

1 States Veterans Administration to maximize benefits and services
2 provided to the veteran.

3 *(h) (1) It is in the interests of justice to restore a defendant who*
4 *acquired a criminal record due to a mental health disorder*
5 *stemming from service in the United States military to the*
6 *community of law abiding citizens. The restorative provisions of*
7 *this subdivision shall apply to cases in which a trial court or a*
8 *court monitoring the defendant's performance of probation*
9 *pursuant to this section finds at a public hearing, held after not*
10 *less than 15 days' notice to the prosecution, the defense, and any*
11 *victim of the offense, that all of the following describe the*
12 *defendant:*

13 *(A) He or she was granted probation and was at the time that*
14 *probation was granted a person described in subdivision (a).*

15 *(B) He or she is in substantial compliance with the conditions*
16 *of that probation.*

17 *(C) He or she has successfully participated in court-ordered*
18 *treatment and services to address the sexual trauma, traumatic*
19 *brain injury, post-traumatic stress disorder, substance abuse, or*
20 *mental health problems stemming from military service.*

21 *(D) He or she does not represent a danger to the health and*
22 *safety of others.*

23 *(E) He or she has demonstrated significant benefit from*
24 *court-ordered education, treatment, or rehabilitation to clearly*
25 *show that granting restorative relief pursuant to this subdivision*
26 *would be in the interests of justice.*

27 *(2) When determining whether granting restorative relief*
28 *pursuant to this subdivision is in the interests of justice, the court*
29 *may consider, among other factors, all of the following:*

30 *(A) The defendant's completion and degree of participation in*
31 *education, treatment, and rehabilitation as ordered by the court.*

32 *(B) The defendant's progress in formal education.*

33 *(C) The defendant's development of career potential.*

34 *(D) The defendant's leadership and personal responsibility*
35 *efforts.*

36 *(E) The defendant's contribution of service in support of the*
37 *community.*

38 *(3) If the court finds that a case satisfies each of the*
39 *requirements described in paragraph (1), then the court may take*

1 any of the following actions by a written order setting forth the
2 reasons for so doing:

3 (A) Deem all conditions of probation to be satisfied, including
4 fines, fees, assessment, and programs, and terminate probation
5 prior to the expiration of the term of probation. This subparagraph
6 does not apply to any court-ordered victim restitution.

7 (B) Reduce to a misdemeanor a conviction for any felony for
8 which the punishment statute indicates that the punishment can
9 be either state prison or county jail, or, with the concurrence of
10 the district attorney, reduce any felony to a misdemeanor.

11 (C) Grant relief in accordance with Section 1203.4.

12 (4) Notwithstanding anything to the contrary in Section 1203.4,
13 a dismissal of the action pursuant to this subdivision has the
14 following effect:

15 (A) Except as otherwise provided in this paragraph, a dismissal
16 of the action pursuant to this subdivision releases the defendant
17 from all penalties and disabilities resulting from the offense of
18 which the defendant has been convicted in the dismissed action.
19 This dismissal restores all rights, privileges, franchises, licenses,
20 permits, and certificates of which the defendant was deprived by
21 reason of the conviction.

22 (B) A dismissal pursuant to this subdivision does not apply to
23 any of the following:

24 (i) A conviction pursuant to subdivision (c) of Section 42002.1
25 of the Vehicle Code.

26 (ii) A conviction pursuant to Section 261.5.

27 (iii) A conviction pursuant to subdivision (c) of Section 286.

28 (iv) A conviction pursuant to Section 288.

29 (v) A conviction pursuant to subdivision (c) of Section 288a.

30 (vi) A conviction pursuant to Section 288.5.

31 (vii) A conviction pursuant to subdivision (j) of Section 289.

32 (viii) The requirement to register pursuant to Section 290.

33 (C) The defendant is not obligated to disclose the arrest on the
34 dismissed action, the dismissed action, or the conviction that was
35 set aside when information concerning prior arrests or convictions
36 is requested to be given under oath, affirmation, or otherwise. The
37 defendant may indicate that he or she has not been arrested when
38 his or her only arrest concerns the dismissed action, except when
39 the defendant is required to disclose the arrest, the conviction that
40 was set aside, and the dismissed action in response to any direct

1 question contained in any questionnaire or application for any
2 law enforcement position.

3 (D) If a conviction that was set aside precluded the defendant
4 from possessing any firearm, then a dismissal pursuant to this
5 subdivision may, in the discretion of the court, expressly restore
6 the defendant's right to own, possess, and keep any type of lawfully
7 registered legal firearm unless the conviction that was set aside
8 was a felony that involved the personal use of a firearm.

9 (E) A dismissal pursuant to this subdivision may, in the
10 discretion of the court, order the sealing of police records of the
11 arrest and court records of the dismissed action, thereafter
12 viewable by the public only in accordance with a court order, and
13 may, in the discretion of the court, order those records to be
14 destroyed when the district attorney concurs with the order.

15 (F) The dismissal of the action pursuant to this subdivision shall
16 be a bar to any future action based on the conduct charged in the
17 dismissed action.

18 (G) In any subsequent prosecution for any other offense, a
19 conviction that was set aside in the dismissed action may be
20 pleaded and proved as a prior conviction and shall have the same
21 effect as if the dismissal pursuant to this subdivision had not been
22 granted.

23 (H) A conviction that was set aside in the dismissed action may
24 be considered a conviction for the purpose of administratively
25 revoking or suspending or otherwise limiting the defendant's
26 driving privilege on the ground of two or more convictions.

27 (I) The defendant's DNA sample and profile in the DNA data
28 bank shall not be removed by a dismissal pursuant to this
29 subdivision.