

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY APRIL 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2371**

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**Introduced by Assembly Member Butler**

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2371, as amended, 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, or mental health problems stemming from service in the United States military to make a determination, prior to sentencing, 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, assessments, 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

1 the defendant is otherwise eligible for probation and the court  
2 places the defendant on probation, the court may order the  
3 defendant into a local, state, federal, or private nonprofit treatment  
4 program for a period not to exceed that which the defendant would  
5 have served in state prison or county jail, provided the defendant  
6 agrees to participate in the program and the court determines that  
7 an appropriate treatment program exists.

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

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

31 (e) A defendant granted probation under this section and  
32 committed to a residential treatment program shall earn sentence  
33 credits for the actual time the defendant serves in residential  
34 treatment.

35 (f) The court, in making an order under this section to commit  
36 a defendant to an established treatment program, shall give  
37 preference to a treatment program that has a history of successfully  
38 treating veterans who suffer from sexual trauma, traumatic brain  
39 injury, post-traumatic stress disorder, substance abuse, or mental  
40 health problems as a result of that service, including, but not limited

1 to, programs operated by the United States Department of Defense  
2 or the United States Veterans Administration.

3 (g) The court and the assigned treatment program may  
4 collaborate with the Department of Veterans Affairs and the United  
5 States Veterans Administration to maximize benefits and services  
6 provided to the veteran.

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

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

18 (B) He or she is in substantial compliance with the conditions  
19 of that probation.

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

24 (D) He or she does not represent a danger to the health and  
25 safety of others.

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

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

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

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

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

37 (D) The defendant's leadership and personal responsibility  
38 efforts.

39 (E) The defendant's contribution of service in support of the  
40 community.

1 (3) If the court finds that a case satisfies each of the requirements  
2 described in paragraph (1), then the court may take any of the  
3 following actions by a written order setting forth the reasons for  
4 so doing:

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

9 (B) Reduce an eligible felony to a misdemeanor pursuant to  
10 subdivision (b) of Section 17.

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

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

23 (ii) A felony conviction pursuant to subdivision (d) of Section  
24 261.5.

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

26 (iv) A conviction pursuant to Section 288.

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

28 (vi) A conviction pursuant to Section 288.5.

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

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

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

1 (D) A dismissal pursuant to this subdivision may, in the  
2 discretion of the court, order the sealing of police records of the  
3 arrest and court records of the dismissed action, thereafter viewable  
4 by the public only in accordance with a court order, ~~and may, in~~  
5 ~~the discretion of the court, order those records to be destroyed~~  
6 ~~when the district attorney concurs with the order.~~

7 (E) The dismissal of the action pursuant to this subdivision shall  
8 be a bar to any future action based on the conduct charged in the  
9 dismissed action.

10 (F) In any subsequent prosecution for any other offense, a  
11 conviction that was set aside in the dismissed action may be  
12 pleaded and proved as a prior conviction and shall have the same  
13 effect as if the dismissal pursuant to this subdivision had not been  
14 granted.

15 (G) A conviction that was set aside in the dismissed action may  
16 be considered a conviction for the purpose of administratively  
17 revoking or suspending or otherwise limiting the defendant's  
18 driving privilege on the ground of two or more convictions.

19 (H) The defendant's DNA sample and profile in the DNA data  
20 bank shall not be removed by a dismissal pursuant to this  
21 subdivision.