

AMENDED IN SENATE MAY 29, 2014

AMENDED IN ASSEMBLY MARCH 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2098

Introduced by Assembly Member Levine

February 20, 2014

An act to amend Section 1170.9 of, and to add Section 1170.91 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Levine. Military personnel: veterans: sentencing: mitigating circumstances.

Existing law requires the 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 the defendant is one of the persons described above, and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court is authorized to order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that period 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 additionally require the court to consider its conclusion that a defendant eligible for probation was, or currently is, a member of the United States military and that 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 as a factor in favor of granting probation.

Existing law provides that specified felonies are punishable by imprisonment in a county jail for 16 months, or 2 or 3 years or, where the term is specified, for the term described in the underlying offense. When a judgment of imprisonment is to be imposed and the statute specifies 3 possible terms, the choice of the appropriate term rests within the sound discretion of the court.

This bill would require the court, if it concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service, to consider those circumstances as a factor in mitigation when imposing a term pursuant to the above provisions. *The bill would provide that this consideration does not preclude the court from considering similar trauma, injury, substance abuse, or mental health due to other causes as evidence or factors in mitigation.*

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

1 brain injury, post-traumatic stress disorder, substance abuse, or
2 mental health problems as a result of his or her service. The court
3 may request, through existing resources, an assessment to aid in
4 that determination.

5 (b) (1) If the court concludes that a defendant convicted of a
6 criminal offense is a person described in subdivision (a), and if
7 the defendant is otherwise eligible for probation, the court shall
8 consider the circumstances described in subdivision (a) as a factor
9 in favor of granting probation.

10 (2) If the court places the defendant on probation, the court may
11 order the defendant into a local, state, federal, or private nonprofit
12 treatment program for a period not to exceed that period which
13 the defendant would have served in state prison or county jail,
14 provided the defendant agrees to participate in the program and
15 the court determines that an appropriate treatment program exists.

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

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

39 (e) A defendant granted probation under this section and
40 committed to a residential treatment program shall earn sentence

1 credits for the actual time the defendant serves in residential
2 treatment.

3 (f) The court, in making an order under this section to commit
4 a defendant to an established treatment program, shall give
5 preference to a treatment program that has a history of successfully
6 treating veterans who suffer from sexual trauma, traumatic brain
7 injury, post-traumatic stress disorder, substance abuse, or mental
8 health problems as a result of that service, including, but not limited
9 to, programs operated by the United States Department of Defense
10 or the United States Department of Veterans Affairs.

11 (g) The court and the assigned treatment program may
12 collaborate with the Department of Veterans Affairs and the United
13 States Department of Veterans Affairs to maximize benefits and
14 services provided to the veteran.

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

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

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

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

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

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

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

1 (A) The defendant’s completion and degree of participation in
2 education, treatment, and rehabilitation as ordered by the court.

3 (B) The defendant’s progress in formal education.

4 (C) The defendant’s development of career potential.

5 (D) The defendant’s leadership and personal responsibility
6 efforts.

7 (E) The defendant’s contribution of service in support of the
8 community.

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

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

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

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

20 (4) Notwithstanding anything to the contrary in Section 1203.4,
21 a dismissal of the action pursuant to this subdivision has the
22 following effect:

23 (A) Except as otherwise provided in this paragraph, a dismissal
24 of the action pursuant to this subdivision releases the defendant
25 from all penalties and disabilities resulting from the offense of
26 which the defendant has been convicted in the dismissed action.

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

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

31 (ii) A felony conviction pursuant to subdivision (d) of Section
32 261.5.

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

34 (iv) A conviction pursuant to Section 288.

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

36 (vi) A conviction pursuant to Section 288.5.

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

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

39 (C) The defendant is not obligated to disclose the arrest on the
40 dismissed action, the dismissed action, or the conviction that was

1 set aside when information concerning prior arrests or convictions
2 is requested to be given under oath, affirmation, or otherwise. The
3 defendant may indicate that he or she has not been arrested when
4 his or her only arrest concerns the dismissed action, except when
5 the defendant is required to disclose the arrest, the conviction that
6 was set aside, and the dismissed action in response to any direct
7 question contained in any questionnaire or application for any law
8 enforcement position.

9 (D) 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 viewable
12 by the public only in accordance with a court order.

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

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

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

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

28 (I) Dismissal of an accusation, information, or conviction
29 pursuant to this section does not authorize a defendant to own,
30 possess, or have in his or her custody or control any firearm or
31 prevent his or her conviction pursuant to Chapter 2 (commencing
32 with Section 29800) of Division 9 of Title 4 of Part 6.

33 SEC. 2. Section 1170.91 is added to the Penal Code, to read:

34 1170.91. If the court concludes that a defendant convicted of
35 a felony offense is, or was, a member of the United States military
36 who may be suffering from sexual trauma, traumatic brain injury,
37 post-traumatic stress disorder, substance abuse, or mental health
38 problems as a result of his or her military service, the court shall
39 consider the circumstance as a factor in mitigation when imposing
40 a term under subdivision (b) of Section 1170. *This consideration*

- 1 *does not preclude the court from considering similar trauma,*
- 2 *injury, substance abuse, or mental health problems due to other*
- 3 *causes, as evidence or factors in mitigation.*

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