

Introduced by Senator Block

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 769, as introduced, Block. Veterans: criminal defendants.

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, 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.

This bill would make a technical, nonsubstantive change to that provision.

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

1 prison and who alleges that he or she committed the offense as a
2 result of sexual trauma, traumatic brain injury, post-traumatic stress
3 disorder, substance abuse, or mental health problems stemming
4 from service in the United States military, the court shall, prior to
5 sentencing, make a determination as to whether the defendant was,
6 or currently is, a member of the United States military and whether
7 the defendant may be suffering from sexual trauma, traumatic
8 brain injury, post-traumatic stress disorder, substance abuse, or
9 mental health problems as a result of ~~that~~ *his or her* service. The
10 court may request, through existing resources, an assessment to
11 aid in that determination.

12 (b) If the court concludes that a defendant convicted of a
13 criminal offense is a person described in subdivision (a), and if
14 the defendant is otherwise eligible for probation and the court
15 places the defendant on probation, the court may order the
16 defendant into a local, state, federal, or private nonprofit treatment
17 program for a period not to exceed that which the defendant would
18 have served in state prison or county jail, provided the defendant
19 agrees to participate in the program and the court determines that
20 an appropriate treatment program exists.

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

35 (d) When determining the “needs of the defendant,” for purposes
36 of Section 1202.7, the court shall consider the fact that the
37 defendant is a person described in subdivision (a) in assessing
38 whether the defendant should be placed on probation and ordered
39 into a federal or community-based treatment service program with
40 a demonstrated history of specializing in the treatment of mental

1 health problems, including substance abuse, post-traumatic stress
2 disorder, traumatic brain injury, military sexual trauma, and other
3 related mental health problems.

4 (e) A defendant granted probation under this section and
5 committed to a residential treatment program shall earn sentence
6 credits for the actual time the defendant serves in residential
7 treatment.

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

16 (g) The court and the assigned treatment program may
17 collaborate with the Department of Veterans Affairs and the United
18 States Veterans Administration to maximize benefits and services
19 provided to the veteran.

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

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

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

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

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

39 (E) He or she has demonstrated significant benefit from
40 court-ordered education, treatment, or rehabilitation to clearly

1 show that granting restorative relief pursuant to this subdivision
2 would be in the interests of justice.

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

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

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

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

10 (D) The defendant's leadership and personal responsibility
11 efforts.

12 (E) The defendant's contribution of service in support of the
13 community.

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

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

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

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

25 (4) Notwithstanding anything to the contrary in Section 1203.4,
26 a dismissal of the action pursuant to this subdivision has the
27 following effect:

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

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

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

36 (ii) A felony conviction pursuant to subdivision (d) of Section
37 261.5.

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

39 (iv) A conviction pursuant to Section 288.

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

- 1 (vi) A conviction pursuant to Section 288.5.
- 2 (vii) A conviction pursuant to subdivision (j) of Section 289.
- 3 (viii) The requirement to register pursuant to Section 290.
- 4 (C) The defendant is not obligated to disclose the arrest on the
5 dismissed action, the dismissed action, or the conviction that was
6 set aside when information concerning prior arrests or convictions
7 is requested to be given under oath, affirmation, or otherwise. The
8 defendant may indicate that he or she has not been arrested when
9 his or her only arrest concerns the dismissed action, except when
10 the defendant is required to disclose the arrest, the conviction that
11 was set aside, and the dismissed action in response to any direct
12 question contained in any questionnaire or application for any law
13 enforcement position.
- 14 (D) A dismissal pursuant to this subdivision may, in the
15 discretion of the court, order the sealing of police records of the
16 arrest and court records of the dismissed action, thereafter viewable
17 by the public only in accordance with a court order.
- 18 (E) The dismissal of the action pursuant to this subdivision shall
19 be a bar to any future action based on the conduct charged in the
20 dismissed action.
- 21 (F) In any subsequent prosecution for any other offense, a
22 conviction that was set aside in the dismissed action may be
23 pleaded and proved as a prior conviction and shall have the same
24 effect as if the dismissal pursuant to this subdivision had not been
25 granted.
- 26 (G) A conviction that was set aside in the dismissed action may
27 be considered a conviction for the purpose of administratively
28 revoking or suspending or otherwise limiting the defendant's
29 driving privilege on the ground of two or more convictions.
- 30 (H) The defendant's DNA sample and profile in the DNA data
31 bank shall not be removed by a dismissal pursuant to this
32 subdivision.

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