

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 amended, 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. *If that defendant is in substantial compliance with conditions of probation and has successfully participated in court-ordered treatment and services, among other requirements, existing law authorizes the court to grant the defendant specified forms of relief, including a dismissal of the action, as specified.*

Existing law provides that a person who has been convicted of a felony, or who is addicted to the use of a narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

This bill would ~~make a technical, nonsubstantive change to that provision~~ provide that dismissal of an accusation, information, or conviction, as specified, pursuant to the provisions described above relating to a defendant who served in the United States military, does not authorize that defendant to own, possess, or have in his or her custody or control any firearm, or prevent his or her conviction for being a felon or drug addict in possession of a firearm.

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 his or her service. The court
14 may request, through existing resources, an assessment to aid in
15 that 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
22 have served in state prison or county jail, provided the defendant
23 agrees to participate in the program and the court determines that
24 an appropriate treatment program exists.

25 (c) If a referral is made to the county mental health authority,
26 the county shall be obligated to provide mental health treatment
27 services only to the extent that resources are available for that
28 purpose, as described in paragraph (5) of subdivision (b) of Section

1 5600.3 of the Welfare and Institutions Code. If mental health
2 treatment services are ordered by the court, the county mental
3 health agency shall coordinate appropriate referral of the defendant
4 to the county veterans service officer, as described in paragraph
5 (5) of subdivision (b) of Section 5600.3 of the Welfare and
6 Institutions Code. The county mental health agency shall not be
7 responsible for providing services outside its traditional scope of
8 services. An order shall be made referring a defendant to a county
9 mental health agency only if that agency has agreed to accept
10 responsibility for the treatment of the defendant.

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

20 (e) A defendant granted probation under this section and
21 committed to a residential treatment program shall earn sentence
22 credits for the actual time the defendant serves in residential
23 treatment.

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

32 (g) The court and the assigned treatment program may
33 collaborate with the Department of Veterans Affairs and the United
34 States Veterans Administration to maximize benefits and services
35 provided to the veteran.

36 (h) (1) It is in the interests of justice to restore a defendant who
37 acquired a criminal record due to a mental health disorder
38 stemming from service in the United States military to the
39 community of law abiding citizens. The restorative provisions of
40 this subdivision shall apply to cases in which a trial court or a court

1 monitoring the defendant’s performance of probation pursuant to
2 this section finds at a public hearing, held after not less than 15
3 days’ notice to the prosecution, the defense, and any victim of the
4 offense, that all of the following describe the defendant:

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

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

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

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

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

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

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

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

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

26 (D) The defendant’s leadership and personal responsibility
27 efforts.

28 (E) The defendant’s contribution of service in support of the
29 community.

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

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

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

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

1 (4) Notwithstanding anything to the contrary in Section 1203.4,
2 a dismissal of the action pursuant to this subdivision has the
3 following effect:

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

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

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

12 (ii) A felony conviction pursuant to subdivision (d) of Section
13 261.5.

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

15 (iv) A conviction pursuant to Section 288.

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

17 (vi) A conviction pursuant to Section 288.5.

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

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

20 (C) The defendant is not obligated to disclose the arrest on the
21 dismissed action, the dismissed action, or the conviction that was
22 set aside when information concerning prior arrests or convictions
23 is requested to be given under oath, affirmation, or otherwise. The
24 defendant may indicate that he or she has not been arrested when
25 his or her only arrest concerns the dismissed action, except when
26 the defendant is required to disclose the arrest, the conviction that
27 was set aside, and the dismissed action in response to any direct
28 question contained in any questionnaire or application for any law
29 enforcement position.

30 (D) A dismissal pursuant to this subdivision may, in the
31 discretion of the court, order the sealing of police records of the
32 arrest and court records of the dismissed action, thereafter viewable
33 by the public only in accordance with a court order.

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

37 (F) In any subsequent prosecution for any other offense, a
38 conviction that was set aside in the dismissed action may be
39 pleaded and proved as a prior conviction and shall have the same

1 effect as if the dismissal pursuant to this subdivision had not been
2 granted.

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

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

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