



VETS HELPING VETS SINCE 1974

CALIFORNIA'S ALTERNATIVE SENTENCING LAW FOR VETERANS AND MEMBERS OF THE U.S. MILITARY

You're a veteran, or maybe you're still in the military. But now you're looking at time in county jail or state prison.

Maybe you could go into a treatment program instead.

California has an alternative sentencing law for veterans and members of the U. S. military convicted of a criminal offense. Make sure your attorney knows about it.

Section 1170.9 could mean the difference between getting the help you need and marking time in a jail cell.

Section 1170.9 of the state Penal Code comes into play when the defendant claims 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."

If you make that claim, the court must hold a hearing, and the judge must determine the answers to a number of questions: Are you (or were you) a member of the U. S. military? Do you suffer from sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health problems as a result of your service? Is there a treatment program that's appropriate for you? Are you eligible for probation?

If the answer to all of these questions is yes, the judge has the authority to place you on probation, and to order you into an appropriate treatment program for a period no longer than you would have served in state prison or county jail.

If you do well in the treatment program and comply with the conditions of your probation, you or your attorney can request a follow-up hearing. Effective January 1, 2013, the judge at this hearing will have the authority to end your probation

before its scheduled expiration date, and to cancel any fines, fees, and assessments stemming from the conviction (except for court-ordered victim restitution). In many cases, the judge will also have the authority to reduce a felony to a misdemeanor, and to order expungement of the record of your offense.

Disclaimer

This memorandum provides general information only. It does not constitute legal advice, nor does it substitute for the advice of an expert representative or attorney who knows the particulars of your case. Any use you make of the information in this memorandum is at your own risk. We have made every effort to provide reliable, up-to-date information, but we do not guarantee its accuracy. The information in this memorandum is current as of December 2012.

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Because our legal staff is small and our resources are limited, Swords to Plowshares can represent only a small number of veterans who seek our assistance with VA claims. Please do not appoint Swords to Plowshares to represent you before the VA without our express consent.

SECTION 1170.9 OF THE STATE PENAL CODE

§ 1170.9. Members of the military; mental health problems stemming from service; probation; mental health treatment services; sentence credits; treatment program preference; collaboration; restorative relief. Effective: January 1, 2013

(a) 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, the court shall, 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. The court may request, through existing resources, an assessment to aid in that determination.

(b) If the court concludes that a defendant convicted of a criminal offense is a person described in subdivision (a), and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may 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.

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

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

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

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

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

(h)(1) It is in the interests of justice to restore a defendant who acquired a criminal record due to a mental health disorder stemming from service in the United States military to the community of law abiding citizens. The restorative provisions of this subdivision shall apply to cases in which a trial court or a court monitoring the defendant’s performance of probation pursuant to this section 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 all of the following describe the defendant:

- (A) He or she was granted probation and was at the time that probation was granted a person described in subdivision (a).
 - (B) He or she is in substantial compliance with the conditions of that probation.
 - (C) He or she has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service.
 - (D) He or she does not represent a danger to the health and safety of others.
 - (E) He or she has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice.
- (2) When determining whether granting restorative relief pursuant to this subdivision is in the interests of justice, the court may consider, among other factors, all of the following:
- (A) The defendant's completion and degree of participation in education, treatment, and rehabilitation as ordered by the court.
 - (B) The defendant's progress in formal education.
 - (C) The defendant's development of career potential.
 - (D) The defendant's leadership and personal responsibility efforts.
 - (E) The defendant's contribution of service in support of the community.
- (3) If the court finds that a case satisfies each of the requirements described in paragraph (1), then the court may take any of the following actions by a written order setting forth the reasons for so doing:
- (A) Deem all conditions of probation to be satisfied, including fines, fees, assessment, and programs, and terminate probation prior to the expiration of the term of probation. This subparagraph does not apply to any court-ordered victim restitution.
 - (B) Reduce an eligible felony to a misdemeanor pursuant to subdivision (b) of Section 17.
 - (C) Grant relief in accordance with Section 1203.4.
- (4) Notwithstanding anything to the contrary in Section 1203.4, a dismissal of the action pursuant to this subdivision has the following effect:
- (A) Except as otherwise provided in this paragraph, a dismissal of the action pursuant to this subdivision releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action.
 - (B) A dismissal pursuant to this subdivision does not apply to any of the following:
 - (i) A conviction pursuant to subdivision (c) of Section 42002.1 of the Vehicle Code.

- (ii) A felony conviction pursuant to subdivision (d) of Section 261.5.
- (iii) A conviction pursuant to subdivision (c) of Section 286.
- (iv) A conviction pursuant to Section 288.
- (v) A conviction pursuant to subdivision (c) of Section 288a.
- (vi) A conviction pursuant to Section 288.5.
- (vii) A conviction pursuant to subdivision (j) of Section 289.
- (viii) The requirement to register pursuant to Section 290.

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

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

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

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

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

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