
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 581 **Hearing Date:** June 18, 2019
Author: Levine
Version: February 14, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentencing: Members of Military: Trauma*

HISTORY

Source: Author

Prior Legislation: AB 865 (Levine), Ch. 523, Stats. 2018
AB 665 (Levine), held in Sen. Approps., 2017
AB 2098 (Levine), Ch. 163, Stats. 2014
SB 1227 (Hancock), Ch. 658, Stats. 2013
AB 2371 (Butler), Ch. 403, Stats. 2012
AB 674 (Salas), Ch. 347, Stats. 2010
AB 2586 (Parra), Ch. 788, Stats. 2006

Support: American G.I Forum of California; American Legion-Department of California; AMVETS-Department of California; California Association of County Veterans Service Officers; California Association of Veteran Service Agencies; California Attorneys for Criminal Justice; California Public Defenders Association; California State Commanders Veterans Council; Ella Baker Center for Human Rights; Initiate Justice; Judicial Council of California; National Association of Social Workers, California Chapter; San Francisco Public Defenders Office; one private individual

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to allow a defendant that meets the criteria to petition for recall and resentencing under existing provisions of law authorizing such relief for military-related trauma to file the petition regardless of the defendant's sentencing date.

Existing law provides that, under the determinate sentencing law, when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term rests within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)

Existing law provides that, in exercising discretion to select one of the three authorized prison terms as specified, "the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant

circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal. Rules of Court, Rule 4.420(b).)

Existing law enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.421.)

Existing law enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.423.)

Existing law allows the court, within 120 days of the sentence, on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, or the county correctional administrator in the case of county jail inmates, to recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. (Pen. Code, § 1170, subd. (d)(1).)

Existing law provides that, effective January 1, 2015, if the court concludes that a defendant convicted of a felony offense, is, or was, a member of the military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or psychological problems as a result of that service, the court must consider the circumstance as a factor in mitigation when imposing one of three possible terms under section 1170, subdivision (b), of the determinate sentencing law. This does not preclude the court from considering similar trauma, injury, substance abuse, or psychological problems due to other cases in mitigation. (Pen. Code, § 1170.91, subd. (a).)

Existing law states that a person who is currently serving a sentence for a felony conviction, whether by trial or plea, who is, or was, a member of the United States military and 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 may petition for a recall of sentence, before the trial court that entered the judgment of conviction in his or her case, to request resentencing if the following conditions are met:

- 1) The circumstance of suffering from the service-related trauma was not considered as a factor in mitigation at the time of sentencing; and,
- 2) The person was sentenced prior to January 1, 2015. This section shall apply retroactively, whether or not the case was final as of January 1, 2015. (Pen. Code, § 1170.91, subd. (b).)

This bill deletes the requirement that the person had been sentenced prior to January 1, 2015 and instead authorizes a defendant to file the petition for recall of a sentence and resentencing without regard to when the defendant was sentenced.

This bill provides that this relief is available whether or not there was argument or evidence about the defendant's condition at the time of trial.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Today, of the 2.7 million Americans deployed to Iraq and Afghanistan since October 2001, as many as 20% have or are expected to develop service-induced mental health problems.

Studies repeatedly demonstrate the link between PTSD with other service-related trauma and increased rates of incarceration. Veterans of recent military engagements: Operation Enduring Freedom (OEF) Operation Iraqi Freedom (OIF) and Operation New Dawn (OND) are three times more likely than other incarcerated veterans to have combat-related PTSD.

According to the California Department of Corrections (CDCR), as of December 2018, there are 6,682 incarcerated veterans.

Even with benefits and services provided by the VA and other veterans' organizations, many veterans afflicted with service-related disabilities go undiagnosed and unrecognized.

In spite of the number of veterans expected to return from the current conflict with mental health problems, a dramatic barrier to care exists. The Walter Reed Army Institute of Research indicates less than half of service members returning from Iraq and Afghanistan who screen positive for PTSD receive treatment.

AB 581 is another tool to help incarcerated veterans with service related trauma to have this trauma considered when a judge is determining a criminal sentence and will open the door for additional support services for these individuals.

2. Legislative History of Penal Code Section 1170.91

AB 2098 (Levine), Statutes of 2014, added Section 1170.91 to the Penal Code. That section requires the court, starting January 1, 2015, to consider a defendant's status as a veteran suffering from PTSD, TBI, and other forms mental illness as a result of military service as a factor in favor of granting probation and as a mitigating factor when choosing between the lower, middle, or upper term.

Last year, AB 865 (Levine), Statutes of 2018 authorized a court to resentencing any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems including PTSD, TBI, and sexual trauma as a result of his or her military service. In other words, it is already a requirement of law that the court consider the mitigating circumstances identified in this bill for anyone who is sentenced, and anyone who did not receive the benefit of that requirement because they were sentenced prior to the time when that law went into effect can petition to have their sentence recalled and be resentenced by the judge.

Thus, under existing law, the court must consider the mitigating circumstances identified in this bill for anyone who is sentenced, and anyone who did not receive the benefit of that requirement because they were sentenced prior to the time when that law went into effect can petition to have their sentence recalled and be resentenced by the judge.

The requirement that the defendant had been sentenced prior to January 1, 2015 was based on the rationale that a person who was sentenced on or after January 1, 2015 would have benefitted from the change in law enacted by AB 2098 in 2014. This bill removes this requirement and instead provides that the person can file a petition for recall and resentencing regardless of when the person was sentenced as long as the circumstance of the service-related trauma was not considered a factor in mitigation at the time of sentencing. This bill also provides that that this relief is available whether or not there was argument or evidence about the defendant's condition at the time of trial.

According to some of the supporters of this bill, even though Section 1170.91 was in effect starting January 1, 2015, some defendants may not have benefitted from the change in law either because some were unaware of the change or because evidence of the service-related trauma was not available or was unknown at the time of sentencing.

3. Argument in Support

According to Judicial Council of California:

The Judicial Council supports AB 581 because the council believes that including the January 1, 2015 date in eligibility criteria could inadvertently exclude some veterans who otherwise meet the eligibility criteria. Thus, the council believes that AB 581 appropriately clarifies that defendants who are currently serving a felony sentence who otherwise meet the eligibility requirements may petition for relief. The council previously supported AB 865 (Levine, Stats. 2018, ch. 523), which allowed a defendant who is currently serving a felony sentence, who is or was a member of the United States military, and who may be suffering from military related trauma, to petition the court for resentencing if those criteria were not considered by the court at the time of sentencing and the person was sentenced prior to January 1, 2015. The council supported AB 865 because the council believed that extending consideration of military trauma when resentencing currently incarcerated veterans upon petition was an appropriate follow up to AB 2098 (Levine; Stats. 2014, ch. 163), which allowed consideration of military related trauma in sentencing of eligible individuals. In supporting AB 865, the council concluded that, to treat all veterans similarly and fairly, AB 865 appropriately applied the provisions of AB 2098 to veterans who were sentenced prior to January 2015 by allowing those veterans to file resentencing petitions using the same criteria. Eliminating the January 1, 2015 date from the eligibility requirements likewise serves the goal of treating all veterans similarly and fairly.