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AB-865 Military personnel: veterans: resentencing: mitigating circumstances. (2017-2018)

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Assembly Bill No. 865

CHAPTER 523

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

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 865, Levine. Military personnel: veterans: resentencing: mitigating circumstances.

Under existing law, most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper lengths of terms. Until January 1, 2022, the choice of the appropriate term that is to best serve the interests of justice rests within the sound discretion of the court.

Existing law, effective January 1, 2015, requires 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 that circumstance as a factor in mitigation when imposing a term pursuant to the sentencing provisions above. Under existing law, 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.

This bill would authorize 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 any of the above-described conditions as a result of his or her military service to petition for a recall of sentence under specified conditions. The bill would require the court, upon receiving a petition, to determine, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, as specified, whether the person satisfies the specified criteria and, if so, would authorize the court, in its discretion, to resentence the person following a resentencing hearing.

This bill would prohibit resentencing under these provisions from resulting in the imposition of a term longer than the original sentence. The bill would also require a person who is resentedenced pursuant to these provisions to be given credit for time served.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1170.91 of the Penal Code is amended to read:

1170.91. (a) If the court 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, the court shall consider the circumstance as a factor in mitigation

when imposing a term under subdivision (b) of Section 1170. This consideration does not preclude the court from considering similar trauma, injury, substance abuse, or mental health problems due to other causes, as evidence or factors in mitigation.

(b) (1) A person 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 pursuant to subdivision (a) if the person meets both of the following conditions:

(A) The circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered as a factor in mitigation at the time of sentencing.

(B) The person was sentenced prior to January 1, 2015. This subdivision shall apply retroactively, whether or not the case was final as of January 1, 2015.

(2) If the court that originally sentenced the person is not available, the presiding judge shall designate another judge to rule on the petition.

(3) Upon receiving a petition under this subdivision, the court shall determine, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, whether the person satisfies the criteria in this subdivision. At that hearing, the prosecution shall have an opportunity to be heard on the petitioner's eligibility and suitability for resentencing. If the person satisfies the criteria, the court may, in its discretion, resentence the person following a resentencing hearing.

(4) A person who is resentenced pursuant to this subdivision shall be given credit for time served.

(5) Under no circumstances may resentencing under this subdivision result in the imposition of a term longer than the original sentence.

(6) This subdivision does not alter or diminish any rights conferred under Section 28 of Article I of the California Constitution (Marsy's Law).

(7) This subdivision does not diminish or abrogate any rights or remedies otherwise available to the person.

(8) This subdivision does not diminish or abrogate the finality of judgments in any case not falling within the purview of this subdivision.

(9) This subdivision does not impose an obligation on the Department of Corrections and Rehabilitation to provide medical or mental health assessments in order to identify potential service-related injuries.