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SB-1209 Sentencing: members of military: trauma. (2021-2022)

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Senate Bill No. 1209

CHAPTER 721

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

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1209, Eggman. Sentencing: members of military: trauma.

Existing law requires a 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 the defendant's military service, to consider that circumstance as a factor in mitigation when imposing a sentence. Existing law allows a defendant who is currently serving a felony sentence and meets these criteria to petition for resentencing if those criteria were not considered at the time of sentencing and the person was sentenced prior to January 1, 2015.

This bill would allow a defendant meeting these criteria to petition for recall of sentence and resentencing, as specified, without regard to whether the defendant was sentenced prior to January 1, 2015. The bill would also exclude from special consideration and from resentencing, any person convicted of, or having a prior conviction for, certain violent and sexual offenses.

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 the defendant's military service, the court shall consider the circumstance as a factor in mitigation when imposing a sentence. 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 the person's military service may petition for a recall of sentence, before the trial court that entered the judgment of conviction in the case, to request resentencing if 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.

(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 the interest of justice, and regardless of whether the original sentence was imposed after a trial or plea, do either of the following:

(A) Reduce the defendant's term of imprisonment by modifying the sentence.

(B) Vacate the conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or by the Attorney General if the case was originally prosecuted by the Department of Justice.

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

(5) Resentencing under this subdivision shall not 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.

(10) This subdivision shall apply retroactively.

(c) This section does not apply to a person convicted of, or having one or more prior convictions for, an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or an offense requiring registration pursuant to subdivision (c) of Section 290.