

SENATE THIRD READING  
SB 1209 (Eggman and Min)  
As Amended May 19, 2022  
Majority vote

## SUMMARY

Expands the ability of defendants who suffered from military related trauma to petition for recall and resentencing regardless of whether the sentence was imposed prior to January 1, 2015 or whether the defendant was sentenced to an indeterminate (life) sentence, but exempts persons who have been convicted of specified violent offenses (super strikes) and registerable sex offenses.

### Major Provisions

- 1) Authorizes a defendant who suffered military related trauma to file a petition for recall of a sentence and resentencing without regard to when the defendant was sentenced, thereby deleting the requirement that the person have been sentenced prior to January 1, 2015.
- 2) Specifies that if the person satisfies the resentencing criteria, the court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:
  - a) Reduce the defendant's term of imprisonment by modifying the sentence; or
  - b) Vacate the defendant's 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 the Attorney General if the case was originally prosecuted by the Department of Justice (DOJ).
- 3) Expands the existing resentencing provision to apply to persons sentenced to indeterminate sentences.
- 4) Specifies special considerations of military service-related trauma in sentencing and resentencing do not apply to a person who has a prior conviction for an offense requiring sex offender registration or for a "super strike" offense.

## COMMENTS

### According to the Author

"The key point of this bill is to ensure that veterans that have experienced trauma related to their military service are provided with the sentencing mitigation and resentencing opportunities we have already passed into law. The initial bill that allowed for sentencing mitigation did not apply to resentencing at all, treating those veterans who were already incarcerated differently. We corrected this with a bill to allow for resentencing for crimes that occurred before 2015. Unfortunately, this retroactivity has also been applied unevenly, to such an extent that CA Supreme Court Justice Godwin Liu noted this section of law 'fails to ensure equal treatment of

all veterans.' SB 1209 seeks to correct this injustice against those who have served our country. We've learned a lot about the impacts of trauma, how long symptoms can take to manifest, and how they can alter thinking and behavior down the road. This bill ensures those with trauma from their honorable military service and sacrifice are provided the considerations we've already passed into law."

### **Arguments in Support**

According to the *California Public Defenders Association*, "SB 1209 would expand Penal Code section 1170.91 to allow military veterans suffering from post-traumatic stress disorder, traumatic brain injury, sexual trauma, substance abuse or mental health problems related to their military service to petition the court for resentencing regardless of whether they were sentenced prior to January 1, 2015, if their military service was not previously considered a factor in mitigation.

"Under existing law, only veterans sentenced after January 1, 2015, are allowed to petition for resentencing. If the court finds that the trauma is a result of military service, the court is to consider it as a factor in mitigation in deciding on resentencing and the appropriate sentence.

"Of the 2.6 million Americans deployed to Iraq and Afghanistan since October 2001, as many as 20% are expected to develop service-induced mental health problems. Human decency and the interests of justice require that veterans who suffer mental illness as the result of their service should receive some consideration for their service-related impairments in the context of an appropriate punishment. Men and women who risked their lives for our country deserve, at the very least, the recognition that their sacrifices will be considered in assessing their appropriate level of punishment if they suffer from service-related trauma. Further, their history of military service demonstrates that they are good candidates for rehabilitation and are likely to return to society as productive, law-abiding members of society.

"Finally, the proposed legislation in no way requires a judge to impose a lesser sentence; rather, it only requires a judge to consider their service meaningfully and honestly, and only when they suffer from mental illness or impairment that may be the result of their service grant resentencing. Thus, if a judge truly believes that the veteran is deserving of a harsher sentence, the judge maintains the power to deny resentencing, even under this legislation."

### **Arguments in Opposition**

None Submitted.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Cost pressure (Trial Court Trust Fund) in the mid-hundreds of thousands of dollars annually to the trial courts in increased workload to hear and adjudicate expanded re-sentencing petitions based on military-related trauma. This bill allows a broader class of defendants to file a petition for relief where a crime may have been the result of military-related trauma, including cases where a defendant was sentenced prior to January 1, 2015 or sentenced to an indeterminate term. The estimated cost of one court day is approximately \$8,000. It unknown how many petitions may be filed, however, if 25 petitions are filed annually, each requiring 16 total hours (two days) of workload, the cost would be approximately \$400,000. Although

courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for staff and infrastructure.

- 2) Possible significant cost savings to the California Department of Corrections and Rehabilitation (CDCR) in incarceration to the extent this bill results in courts re-sentencing people to a lesser prison sentences based on military-related trauma. This bill specifically authorizes a person sentenced to an indeterminate term (i.e., people sentenced to a life term) to apply for re-sentencing. If this bill results in resentencing 10 people to a determinate term resulting in each of those 10 people serving five fewer years in state prison, at an average annual cost per person of \$104,000, the savings would be \$5.2 million annually.

## VOTES

### SENATE FLOOR: 36-1-3

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**NO:** Nielsen

**ABS, ABST OR NV:** Borgeas, Hertzberg, Melendez

### ASM PUBLIC SAFETY: 5-0-3

**YES:** Jones-Sawyer, Lee, Quirk, Santiago, Cristina Garcia

**ABS, ABST OR NV:** Lackey, Mia Bonta, Seyarto

### ASM APPROPRIATIONS: 12-0-4

**YES:** Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

**ABS, ABST OR NV:** Bigelow, Megan Dahle, Davies, Fong

## UPDATED

VERSION: May 19, 2022

CONSULTANT: Cheryl Anderson / PUB. S. / (916) 319-3744

FN: 0003525