

Office of the State Public Defender

1111 Broadway, 10th Floor
Oakland, California 94607-4139
Telephone: (510) 267-3300
Fax: (510) 452-8712



Veterans Resentencing Information

SB 1209

SB 1209 is a new law affecting veterans with felony convictions that begins on January 1, 2023. SB 1209 changes Penal Code section 1170.91. It allows people who have served in the military to ask a court to resentence them to less time. The law applies to people who are currently serving in the military. It also applies to people who used to serve in the military. To be able to use the new law, the person must have a trauma or condition that is related to their military service.

A copy of the law and a sample petition are attached. Please read both carefully. If you believe you are eligible, you can fill out the attached petition to ask the court to resentence you.

WHO CAN PETITION TO BE RESENTENCED UNDER SB 1209?

To be able to use the new law, the person must have:

- (1) Served in the United States military.
- (2) Have a condition or trauma that is related to their military service.
- (3) The court did not think about those issues when they were sentenced.

Trauma or condition means having at least one of the following:

- Sexual trauma
- Traumatic brain injury
- Post-traumatic stress disorder
- Substance abuse
- Mental health problems.

People who are serving a determinate sentence (have a lower, middle or upper term sentence) or who are on probation, parole, post-release community supervision or mandatory supervision can file a petition for resentencing. The new law also applies to people who are serving life sentences with the possibility of parole.

WHICH VETERANS CANNOT USE THIS LAW?

Not everyone who has served in the military can ask the judge to resentence them under this new law. People who are required to register as sex offenders or who have been convicted of some special felonies are not able to use the new law. You can find a list of those convictions in the Frequently Asked Questions section of this packet.

WHAT CAN THE JUDGE DO?

The judge gets to decide what the new sentence should be. In deciding the new sentence, the judge has to consider whether the person has had trauma from their time in the military, such as mental health problems or post-traumatic stress disorder (PTSD).

The judge is not allowed to make the person's sentence longer. The judge can:

- Lower the sentence
- Change the charges to lesser charges, if the district attorney agrees
- Shorten probation or parole
- Leave the sentence the same.

FILING THE PETITION

A petition is a document you send to the court asking for something. A sample petition you can use to get into court is attached. The form allows you to ask for a lawyer to represent you. You do not have to use this form.

If you want to use the form, you will need check the boxes and write in information about your case. Once you have filled out and signed the form, you need to:

- (1) send the original completed form to the court that sentenced you.
- (2) send a copy to the district attorney.
- (3) send a copy to the attorney or the public defender who represented you.
- (4) keep a copy for your records.

Attached are addresses for the public defender offices across California. This may be helpful for filling out the petition. The addresses should be on your paperwork from court, if you still have it. If you don't have the addresses you need, you should check with the law library.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible to apply for relief.

Q: I am eligible for relief. How can this law help me?

A: The judge can shorten the length of your time in custody or shorten the length of time you are on probation or parole. Or, if everyone agrees, the judge can change the type of charge. In order to change the type of charge you are convicted of, the prosecutor, the judge and you must all agree. If you all agree, it does not matter if you were not originally charged with the lesser included or lesser related offenses.

Q: Do I need to be serving a sentence in prison to use this law?

A: No. It does not matter where you are serving your sentence. The new law applies to those serving sentences in county jails or in CDCR. It also applies to those who are on supervision because of their conviction (for example, those on probation, parole, post-release community supervision or mandatory supervision).

Q: I took a deal. Am I eligible if I did not go to trial?

A: Yes. It does not matter if you were convicted after a trial or whether you were convicted through a plea bargain. If the judge determines that you are eligible for relief, the new law will apply.

Q: Does this law also apply to misdemeanor convictions?

A: No. The new law is limited to those who are currently serving felony sentences.

Q: When should I file the petition for recall of sentence?

A: The new law takes effect on January 1, 2023. You should file your petition for recall of sentence after that date.

Q: Is there a deadline for filing a petition?

A: No. There is no deadline to file a petition for recall of sentence.

Q: Should I file a petition if I do not know whether I am eligible?

A: You should not file a petition unless you believe you are eligible. However, if you read through the petition and think you are eligible, you can file the petition and ask for a lawyer. You do not have to attach military or mental health records when you file your petition for recall of sentence. Your lawyer can get these records later.

Q: What prior convictions could stop me from using this new law?

A: If you have a conviction for one of these listed felonies, you are not able to use the new law. It does not matter if the conviction is very old or if it is your most recent conviction.

- Any sexually violent offense
- Oral copulation, sodomy or sexual penetration of a person under 14 years of age or more than 10 years younger than the other person
- Any lewd or lascivious act involving a person under 14 years of age
- Any conviction that requires you to register as a sex offender
- Any homicide offense, including attempted homicide
- Solicitation to commit murder
- Assault with a machine gun on a peace officer or firefighter
- Possession of a weapon of mass destruction
- Any serious or violent felony punishable by life imprisonment or death

Q: How can I get records of my military service?

A: You can request records of your military service from the National Personnel Records Center (NPRC) using form SF 180. A copy of this form is included with this packet. You can also write a letter to the NPRC and send it to:

NPRC
1 Archives Drive
St. Louis, Missouri 63138.

SAMPLE PETITION

Petitioner name: CDCR no. (if applicable): Institution name (if applicable): Street address: City, State, Zip Code: Attorney name (if applicable): State Bar no.:	<i>For Court Use Only</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: _____	SUPERIOR COURT CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	<i>For Court Use Only</i>
PETITION FOR RECALL OF SENTENCE (Pen. Code § 1170.91(b))	Date: Time: Department:

I _____, declare as follows:

1. I am currently serving a sentence for the felony conviction(s) listed below.
- I am currently in jail or prison; or
- I am currently on supervision because of my conviction (for example, probation, parole, post-release community supervision, or mandatory supervision).
2. On (date of conviction): _____, I was convicted of the following felony offense(s) (attach additional sheets if necessary):

Code	Section	Name of offense

3. I am now or was a member of the United States military. I am serving or served in the (branch of military) _____.
4. I request that this Court appoint counsel to represent me.
5. I am suffering from at least one of the conditions listed below that are related to my service in the military:
- Sexual trauma
 - Traumatic Brain Injury (TBI)
 - Post-Traumatic Stress Disorder (PTSD)
 - Substance Abuse
 - Mental health problem
6. I believe that when I was sentenced, the judge did not consider my service-connected trauma, injury or condition as a factor in deciding my sentence.
7. I have mailed a copy of this Petition to the following:

Office of the District Attorney

County of _____

[Street Address]

[City, State, Zip]

Office of the Public Defender

County of _____

[Street Address]

[City, State, Zip]

OR

[If not represented by the Public Defender]

[Trial attorney name]

[Street Address]

[City, State, Zip]

I declare under penalty of perjury that the above is true except as to that stated on information and belief or that which is legal conclusion and as to those, I believe them to be true.

Date: _____ **City:** _____ **State:** _____

Signature: _____ **Printed name:** _____

REQUEST FOR MILITARY RECORD

REQUEST PERTAINING TO MILITARY RECORDS

Requests can be submitted online using eVetRecs at <https://www.archives.gov/veterans/military-service-records/>

To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. PLEASE PRINT LEGIBLY OR TYPE BELOW.

SECTION I - INFORMATION NEEDED TO LOCATE RECORDS (Furnish as much information as possible.)

1. NAME USED DURING SERVICE (last, first, full middle)	2. SOCIAL SECURITY #	3. DATE OF BIRTH	4. PLACE OF BIRTH
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5. SERVICE, PAST AND PRESENT (For an effective records search, it is important that ALL service be shown below.)

	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER (If unknown, write "unknown")
a. ACTIVE				<input type="checkbox"/>	<input type="checkbox"/>	
b. RESERVE				<input type="checkbox"/>	<input type="checkbox"/>	
c. NATIONAL GUARD				<input type="checkbox"/>	<input type="checkbox"/>	

6. PLEASE LIST LAST FOUR DUTY STATIONS, IF KNOWN: 1. _____ 2. _____ 3. _____ 4. _____

7. IS THIS PERSON DECEASED? NO YES - MUST provide Date of Death if veteran is deceased: _____

8. DID THIS PERSON RETIRE FROM MILITARY SERVICE? NO YES

SECTION II - INFORMATION AND/OR DOCUMENTS REQUESTED

1. CHECK THE ITEM(S) YOU ARE REQUESTING:

- DD Form 214 or equivalent:** Year(s) in which form(s) issued to veteran (Date of Separation): _____
This form contains information used to verify military service. An UNDELETED DD Form 214 is ordinarily required to determine eligibility for benefits. If you request a DELETED copy, the following items will be blacked out: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and, for separations after June 30, 1979, character of separation and dates of time lost. Please note – recent veterans may be able to request a DD Form 214 through milConnect by visiting: <https://www.va.gov/records/get-military-service-records/>
An UNDELETED copy will be sent UNLESS YOU SPECIFY A DELETED COPY by checking this box: I want a DELETED copy.
- Official Military Personnel File (OMPF):** The OMPF may include duty stations and assignments, training and qualifications, awards and decorations received, disciplinary actions, administrative remarks, enlistment and/or discharge information (including DD Form 214, Report of Separation, or equivalent), and other personnel actions. Detailed information about the veteran's participation in battles and their military engagements is NOT contained in the record.
- Medical Records:** Includes health (outpatient), extended ambulatory, and dental records. If inpatient/hospitalization records are requested, please specify below.
 I request inpatient/hospitalization records from _____ (facility), last treated in _____ (year). (NOTE: Fields are required)
If available, you may receive copies of inpatient narrative summaries, operative reports, discharge summaries, etc. contained in the record.
- Dental Records:** Please check this box if ONLY dental records are needed from the medical record.
- Other (Please Specify):** _____

2. PURPOSE: (Providing information about the purpose of the request is voluntary; however, it may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.)

- Benefits (explain) Employment VA Loan Programs Medical Genealogy Correction Personal Other (explain)

Explain here: _____

SECTION III - RETURN ADDRESS AND SIGNATURE

1. REQUESTER NAME: _____ 2. RELATIONSHIP TO VETERAN: _____

3. I am the MILITARY SERVICE MEMBER OR VETERAN identified in Section 1, above. I am the VETERAN'S LEGAL GUARDIAN (MUST submit copy of Court Appointment) or AUTHORIZED REPRESENTATIVE (MUST submit copy of Authorization Letter or Power of Attorney)
- I am the DECEASED VETERAN'S NEXT-OF-KIN (MUST submit Proof of Death. See item 2a on instruction sheet.) OTHER (Specify): _____

4. SEND INFORMATION/DOCUMENTS TO:
(Please print or type. See item 4 on accompanying instructions.)

Name _____

Street Address _____ Apt. # _____

City _____ State _____ ZIP Code _____

Daytime Phone _____ Fax Number _____

Email Address _____

5. AUTHORIZATION SIGNATURE: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section 3 is true and correct and that I authorize the release of the requested information. (See items 2a or 3a on the accompanying instructions sheet. Without the Authorization Signature of the veteran, next-of-kin of deceased veteran, veteran's legal guardian, authorized government agent, or other authorized representative, only limited information can be released unless the request is archival. No signature is required if the request is for archival records.)

Signature Required – Do not print _____ Date _____

* This form is available at <https://www.archives.gov/veterans-military-service-records/standard-form-180.pdf> on the National Archives and Records Administration (NARA) web site. *

The various categories of military service records are described in the chart below. For each category there is a code number which indicates the address at the bottom of the page to which this request should be sent. Please refer to the Instruction and Information Sheet accompanying this form as needed.

BRANCH	CURRENT STATUS OF SERVICE MEMBER	Personnel Record	Medical or Service Treatment Record
AIR FORCE	Discharged, deceased, or retired before 5/1/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 9/30/2004	14	11
	Discharged, deceased, or retired 10/1/2004 – 12/31/2013	1	11
	Discharged, deceased, or retired on or after 1/1/2014	1	13
	Active (including National Guard on active duty in the Air Force), TDRL, or general officers retired with pay	1	
	Reserve, IRR, Retired Reserve in non-pay status, current National Guard officers not on active duty in the Air Force, or National Guard released from active duty in the Air Force	2	
	Current National Guard enlisted not on active duty in the Air Force	2	13
COAST GUARD	Discharged, deceased, or retired before 1/1/1898	6	
	Discharged, deceased, or retired 1/1/1898 – 3/31/1998	14	14
	Discharged, deceased, or retired 4/1/1998 – 9/30/2006	14	11
	Discharged, deceased, or retired 10/1/2006 – 9/30/2013	3	11
	Discharged, deceased, or retired on or after 10/1/2013	3	14
	Active, Reserve, Individual Ready Reserve or TDRL	3	
MARINE CORPS	Discharged, deceased, or retired before 1/1/1895	6	
	Discharged, deceased, or retired 1/1/1905 – 4/30/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 12/31/1998	14	11
	Discharged, deceased, or retired 1/1/1999 - 12/31/2013	4	11
	Discharged, deceased, or retired on or after 1/1/2014	4	8
	Individual Ready Reserve	5	
	Active, Selected Marine Corps Reserve, TDRL	4	
ARMY	Discharged, deceased, or retired before 11/1/1912 (enlisted) or before 7/1/1917 (officer)	6	
	Discharged, deceased, or retired 11/1/1912 – 10/15/1992 (enlisted) or 7/1/1917 – 10/15/1992 (officer)	14	
	Discharged, deceased, or retired 10/16/1992 – 9/30/2002	14	11
	Discharged, deceased, or retired (including TDRL) 10/1/2002 – 12/31/2013	7	11
	Discharged, deceased, or retired (including TDRL) on or after 1/1/2014	7	9
	Current Soldier (Active, Reserve (including Individual Ready Reserve) or National Guard)	7	
NAVY	Discharged, deceased, or retired before 1/1/1886 (enlisted) or before 1/1/1903 (officer)	6	
	Discharged, deceased, or retired 1/1/1886 – 1/30/1994 (enlisted) or 1/1/1903 – 1/30/1994 (officer)	14	14
	Discharged, deceased, or retired 1/31/1994 – 12/31/1994	14	11
	Discharged, deceased, or retired 1/1/1995 – 12/31/2013	10	11
	Discharged, deceased, or retired on or after 1/1/2014	10	8
	Active, Reserve, or TDRL	10	
PHS	Public Health Service - Commissioned Corps officers only	12	

ADDRESS LIST OF CUSTODIANS and SELF-SERVICE WEBSITES (BY CODE NUMBERS SHOWN ABOVE) – Where to write/send this form

1	Air Force Personnel Center AFPC/DP2SSM 550 C Street West JBSA-Randolph TX 78150-4721 Fax Number: 210-565-3124 Email: DP2SSM.MILRECS.INCOMING@US.AF.MIL	6	National Archives & Records Administration Research Services (RDTIR) 700 Pennsylvania Avenue NW Washington, DC 20408-0001	11	Department of Veterans Affairs ATTN: Release of Information Claims Intake Center P.O. Box 4444 Janesville, WI 53547-4444 Fax Number: 844-531-7818 https://www.va.gov
2	Air Reserve Personnel Center Total Force Service Center: 1-800-525-0102 https://mypers.af.mil/	7	US Army Human Resources Command's web page: https://www.hrc.army.mil/content/1113 or 1-888-ARMYHRC (1-888-276-9472)	12	Division of Commissioned Corps Officer Support ATTN: Records Officer 1101 Wooton Parkway, Plaza Level, Suite 100 Rockville, MD 20852
3	Commander, Personnel Service Center (BOPS-C-MR) MS7200 US Coast Guard 2703 Martin Luther King Jr Ave SE Washington, DC 20593-7200 https://www.dcms.uscg.mil/ompf	8	Navy Medicine Records Activity (NMRA) BUMED Detachment St. Louis 4300 Goodfellow Boulevard, Building 103 St. Louis, MO 63120 Fax number: 314-260-8128	13	AF STR Processing Center ATTN: Release of Information 3370 Nacogdoches Road, Suite 116 San Antonio, TX 78217
4	Headquarters U.S. Marine Corps Manpower Management Records & Performance (MMRP-10) 2008 Elliot Road Quantico, VA 22134-5030 SMB.MANPOWER.MMRP-10@usmc.mil	9	AMEDD Army Record Processing Center 3370 Nacogdoches Road, Suite 116 San Antonio, TX 78217 Fax Number: 210-201-8310	14	National Personnel Records Center (Military Personnel Records) 1 Archives Drive St. Louis, MO 63138-1002 https://www.archives.gov/veterans/military-service-records/
5	Marine Corps Forces Reserve 2000 Opelousas Avenue New Orleans, LA 70114	10	Navy Personnel Command (PERS-313) 5720 Integrity Drive Millington, TN 38055-3130		