

Office of the State Public Defender

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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

INSTRUCTION AND INFORMATION SHEET FOR SF 180, REQUEST PERTAINING TO MILITARY RECORDS

1. General Information. The Standard Form 180, Request Pertaining to Military Records (SF 180) is used to request information from military records. Certain identifying information is necessary to determine the location of an individual's record of military service. Please try to answer each item on the SF180. If you do not have and cannot obtain the information for an item, show "NA," meaning the information is "not available". Include as much of the requested information as you can. Incomplete information may delay response time. To determine where to mail this request see Page 2 of the SF 180 for record locations and facility addresses. Medical information may be withheld from a patient if determined that the information would be detrimental to the patient's physical or mental health or would likely cause the patient to harm himself or someone else. Online requests may be submitted to the National Personnel Records Center (NPRC) by a veteran or deceased veteran's next-of-kin using eVetRecs at <https://www.archives.gov/veterans/military-service-records/>.

2. Personnel Records/Military Human Resource Records/Official Military Personnel File (OMPF) and Medical Records/Service Treatment Records (STR). Personnel records of military members who were discharged, retired, or died in service **LESS THAN 62 YEARS AGO** and medical records are in the legal custody of the military service department and are administered in accordance with rules issued by the Department of Defense and the Department of Homeland Security (DHS, Coast Guard). STRs of persons on active duty are generally kept at the local servicing clinic. After the last day of active duty, STRs should be requested from the appropriate address on page 2 of the SF 180 (See item 3, Archival Records, if the military member was discharged, retired or died in service more than 62 years ago).

a. Release of information: Release of information is subject to restrictions imposed by the military services consistent with Department of Defense regulations, the provisions of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. The service member (either past or present) or the member's authorized legal recipient has access to almost any information contained in that member's own record. The authorization signature of the service member or the member's authorized legal recipient is needed in Section III of the SF 180. Others requesting information from military personnel records and/or STRs must have the release authorization in Section III of the SF 180 signed by the member or authorized legal recipient. If the appropriate signature cannot be obtained, only limited types of information can be provided (DoD 6025.18-R C8). If the former member is deceased, the surviving next-of-kin (NOK) may be entitled to greater access to a deceased veteran's records than a member of the general public (DoD 6025.18-R C6.2.1.2). The NOK may be any of the following: unmarried/surviving spouse, father, mother, son, daughter, sister, or brother. Requesters **MUST provide proof of death such as the DD Form 1300, Casualty Report, a copy of a death certificate, newspaper article (obituary) or death notice, coroner's report of death, funeral director's signed statement of death, or verdict of coroner's jury.**

b. Fees for records: There is no charge for most services provided to service members or next-of-kin of deceased veterans. A nominal fee is charged for certain types of service. In most instances, service fees cannot be determined in advance. If your request involves a service fee, you will receive an invoice with your records.

3. Archival Records. Personnel records of military members who were discharged, retired, or died in service **62 OR MORE YEARS AGO** have been transferred to the legal custody of NARA and are referred to as "archival records".

a. Release of Information: Archival records are open to the public. The Privacy Act of 1974 does not apply to archival records, therefore, written authorization from the veteran or next-of-kin is not required. In order to protect the privacy of the veteran, his/her family, and third parties named in the records, the personal privacy exemption of the Freedom of Information Act (5 U.S.C. 552 (b)(6)) may still apply and may preclude the release of some information.

b. Fees for Archival Records: Access to archival records are granted by offering copies of the records for a fee (44 U.S.C. 2116 (c)). If a fee applies to the copies of documents in the requested record, you will receive an invoice. Copies will be sent after payment is made. For more information see <https://www.archives.gov/st-louis/archival-programs/military-personnel-archival/ompf-archival-requests.html>.

4. Where reply may be sent. The reply may be sent to the service member or any other address designated by the service member or other authorized requester. If the designated address is NOT registered to the addressee by the U.S. Postal Service (USPS), provide BOTH the addressee's name AND "in care of" (c/o) the name of the person to whom the address is registered on the NAME line in Section III, item 3, on page 1 of the SF 180. The COMPLETE address must be provided, INCLUDING any apartment/suite/unit/lot/space/etc. number. NOTE: If requester desires to send his/her record to a third party, he/she must fill out a DD Form 2870 authorizing the releasing agency to release the record and the timeframe of the authorization. The form may be downloaded using most commercial web search tools by entering "DD Form 2870" as a search term.

5. Definitions and abbreviations. DISCHARGED -- the individual has no current military status; SERVICE TREATMENT RECORD (STR) -- The chronology of medical, mental health, and dental care received by service members during the course of their military career (does not include records of treatment while hospitalized); TDRL – Temporary Disability Retired List.

6. Service completed before World War I. National Archives Trust Fund (NATF) forms must be used to request these records. Obtain the forms by e-mail from inquire@nara.gov or write to the Code 6 address on page 2 of the SF 180.

PRIVACY ACT OF 1974 COMPLIANCE INFORMATION

The following information is provided in accordance with 5 U.S.C. 552a(e)(3) and applies to this form. Authority for collection of the information is 44 U.S.C. 2907, 3101, and 3103, and Public Law 104-134 (April 26, 1996), as amended in title 31, section 7701. Disclosure of the information is voluntary. If the requested information is not provided, it may delay servicing your inquiry because the facility servicing the service member's record may not have all of the information needed to locate it. The purpose of the information on this form is to assist the facility servicing the records (see the address list) in locating the correct military service record(s) or information to answer your inquiry. This form is then retained as a record of disclosure. The form may also be disclosed to Department of Defense components, the Department of Veterans Affairs, the Department of Homeland Security (DHS, U.S. Coast Guard), or the National Archives and Records Administration when the original custodian of the military health and personnel records transfers all or part of those records to that agency. If the service member was a member of the National Guard, the form may also be disclosed to the Adjutant General of the appropriate state, District of Columbia, or Puerto Rico, where he or she served.

PAPERWORK REDUCTION ACT PUBLIC BURDEN STATEMENT

Public burden reporting for this collection of information is estimated to be five minutes per request, including time for reviewing instructions and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to National Archives and Records Administration (MP), 8601 Adelphi Road, College Park, MD 20740-6001. **DO NOT SEND COMPLETED FORMS TO THIS ADDRESS. SEND COMPLETED FORMS TO THE APPROPRIATE ADDRESS LISTED ON PAGE 2 OF THE SF 180.**

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						
b. RESERVE						
c. NATIONAL GUARD						

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 I, above.
- I am the DECEASED VETERAN'S NEXT-OF-KIN (MUST submit Proof of Death. See item 2a on instruction sheet.)
- 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)
- 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
	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		