



Judicial Council of California
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June 5, 2014

Hon. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2082
Sacramento, California 95814

Subject: AB 2098 (Levine), as amended May 29, 2014 – Support if amended
Hearing: Senate Public Safety Committee – June 10, 2014

Dear Senator Hancock:

The Judicial Council is pleased to support AB 2098, if amended. The bill currently does the following: (1) requires the court to consider a defendant's status as a veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as result of his or her military service, as a factor in favor of granting probation; (2) requires the court to consider a defendant's status as a combat veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as a result of his or her military service, as a factor in mitigation when choosing whether to impose the lower, middle, or upper term of a state prison sentence; and (3) clarifies that consideration of veteran status in sentencing 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.

The Judicial Council believes that AB 2098 would benefit from the following amendments: (1) amend Penal Code section 1170.9(b) to require that military related service and resulting conditions were a substantial factor in the commission of the criminal offense; (2) amend Penal Code section 1170.91 to similarly require that the military-related service and resulting

conditions were a substantial factor in the commission of the criminal offense; and (3) amend Penal Code sections 1170.9 and 1170.91 to provide that a court may consider the factors listed in the section, but are not required to consider them.

The Judicial Council believe these amendments support judicial discretion in cases involving defendants who have certain conditions resulting from military-related service. For example, the council believes it is important to change "shall" to "may" in both Penal Code sections because the change will give courts discretion in considering what is relevant based on the individual facts and circumstances of a defendant. The Judicial Council believes that judicial discretion is also enhanced if the court can determine whether the conditions resulting from military related service are actually a substantial factor in the commission of a crime. As the bill is currently written, the courts must take the information into consideration without determining whether there was a causal connection between the conditions resulting from the military related service and the commission of the crime.

For these reasons, the Judicial Council is pleased to support AB 2098, if amended.

Sincerely,



Sharon Reilly
Senior Attorney

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cc: Members, Senate Public Safety Committee
Hon. Marc B. Levine, Member of the Assembly
Ms. Mary Kennedy, Counsel, Senate Public Safety Committee
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Mr. Eric Csizmar, Senate Republican Office of Policy