

**Introduced by Senator Liu**February 19, 2010

---

---

An act to add Section 1170.05 to the Penal Code, relating to inmates.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1266, as introduced, Liu. Inmates: alternative custody.

Existing law provides a system of prisons under the Department of Corrections and Rehabilitation to house inmates committed to state prison for felonies.

This bill would authorize the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates and inmates who, immediately prior to incarceration, were primary caregivers of dependent children, as defined, who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison. The bill would define an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility during the hours designated by the Department of Corrections and Rehabilitation. The bill would authorize the department to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements. The bill would, among other things, provide inmate eligibility criteria, authorize the secretary to prescribe rules and regulations for the program, including imposing certain inmate participation requirements, and authorize certain inmate compliance verification procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) California has incarcerated about 10,000 women, which is  
4 more than any other state.

5 (b) According to a November 2009 estimate by the Department  
6 of Corrections and Rehabilitation, about 85-90 percent of female  
7 inmates are nonviolent offenders.

8 (c) According to a 2004 report from the Little Hoover  
9 Commission, two-thirds of female inmates were convicted of  
10 property or drug-related crimes.

11 (d) According to a 2004 report from the Little Hoover  
12 Commission, more female inmates have been victims of violent  
13 crimes than perpetrators. Four in 10 were physically or sexually  
14 abused before 18 years of age.

15 (e) According to a 2004 Little Hoover Commission report, the  
16 incarceration rate among female offenders for violent crimes has  
17 doubled over the last 20 years.

18 (f) According to a 2004 Little Hoover Commission report, at  
19 the time of their arrest, half of incarcerated women were taking  
20 care of their children and two-thirds of those women were single  
21 parents.

22 (g) Experts agree that parental incarceration is a significant risk  
23 factor for children. In order to better protect children the Legislature  
24 must reconsider policies related to incarceration for primary  
25 caregivers.

26 SEC. 2. Section 1170.05 is added to the Penal Code, to read:

27 1170.05. (a) Notwithstanding any other law, the Secretary of  
28 the Department of Corrections and Rehabilitation is authorized to  
29 offer a program under which female inmates and inmates who  
30 were primary caregivers of dependent children immediately prior  
31 to incarceration, as specified in subdivision (c), who are not  
32 precluded by subdivision (d), and who have been committed to  
33 state prison may be allowed to participate in a voluntary alternative  
34 custody program as defined in subdivision (b) in lieu of their  
35 confinement in state prison. In order to qualify for the program an  
36 offender need not be confined in an institution under the  
37 jurisdiction of the Department of Corrections and Rehabilitation.  
38 Under this program, one day of participation in an alternative

1 custody program shall be in lieu of one day of incarceration in a  
2 state prison. Participants in the program shall receive any sentence  
3 reduction credits that they would have received had they served  
4 their sentence in a state prison, and shall be subject to denial and  
5 loss of credit pursuant to subdivision (a) of Section 2932. The  
6 department may enter into contracts with county agencies,  
7 not-for-profit organizations, for-profit organizations, and others  
8 in order to promote alternative custody placements.

9 (b) As used in this section, an alternative custody program shall  
10 include, but not be limited to, the following:

11 (1) Confinement to a residential home during the hours  
12 designated by the department.

13 (2) Confinement to a residential drug or treatment program  
14 during the hours designated by the department.

15 (3) Confinement to a transitional care facility during the hours  
16 designated by the department.

17 (c) Except as provided by subdivision (d), female inmates and  
18 inmates who were primary caregivers of dependent children  
19 immediately prior to incarceration sentenced to state prison for a  
20 determinate term of imprisonment pursuant to Section 1170, and  
21 only those persons, shall be eligible to participate in the alternative  
22 custody program authorized by this section.

23 (d) An inmate committed to the state prison who meets any of  
24 the following criteria shall not be eligible to participate in the  
25 alternative custody program:

26 (1) The person has a current or prior conviction for a violent  
27 offense as defined in Section 667.5.

28 (2) The person has a current or prior conviction for an offense  
29 that requires the person to register as a sex offender as provided  
30 in Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
31 1.

32 (3) The person was screened by the department using a validated  
33 risk assessment tool and determined to pose a high risk to reoffend.

34 (4) The person has a history, within the last 10 years, of escape  
35 while under juvenile or adult custody, including, but not limited  
36 to, any detention facility, group home, treatment facility, camp,  
37 jail, or state prison facility.

38 (e) An alternative custody program shall include the use of  
39 electronic monitoring, global positioning system devices, or other  
40 supervising devices for the purpose of helping to verify a

1 participant's compliance with the rules and regulations of the  
2 program. The devices shall not be used to eavesdrop or record any  
3 conversation, except a conversation between the participant and  
4 the person supervising the participant, in which case the recording  
5 of such a conversation is to be used solely for the purposes of voice  
6 identification.

7 (f) The secretary shall prescribe reasonable rules and regulations  
8 under which the alternative custody program shall operate. The  
9 department shall adopt regulations necessary to effectuate this  
10 section, including emergency regulations as provided under Section  
11 5058.3 and adopted pursuant to the Administrative Procedure Act  
12 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 of the Government Code). The participant  
14 shall be informed in writing that he or she shall comply with the  
15 rules and regulations of the program, including, but not limited to,  
16 the following rules:

17 (1) The participant shall remain within the interior premises of  
18 his or her residence during the hours designated by the secretary  
19 or his or her designee.

20 (2) The participant shall be subject to search and seizure by a  
21 parole officer or other peace officer at any time of the day or night,  
22 with or without cause. In addition, the participant shall admit any  
23 peace officer designated by the secretary or his or her designee  
24 into the participant's residence at any time for purposes of verifying  
25 the participant's compliance with the conditions of his or her  
26 detention. Prior to participation in the alternative custody program,  
27 all participants shall agree in writing to these terms and conditions.

28 (3) The secretary or his or her designee may immediately retake  
29 the participant into custody to serve the balance of his or her  
30 sentence if the electronic monitoring or supervising devices are  
31 unable for any reason to properly perform their function at the  
32 designated place of detention, if the participant fails to remain  
33 within the place of detention as stipulated in the agreement, or if  
34 the participant for any other reason no longer meets the established  
35 criteria under this section.

36 (g) Whenever a peace officer supervising a participant has  
37 reasonable suspicion to believe that the participant is not complying  
38 with the rules or conditions of the program, or that the electronic  
39 monitoring devices are unable to function properly in the  
40 designated place of confinement, the peace officer may, under

1 general or specific authorization of the secretary or his or her  
2 designee, and without a warrant of arrest, retake the participant  
3 into custody to complete the remainder of the original sentence.

4 (h) Nothing in this section shall be construed to require the  
5 secretary or his or her designee to allow an inmate to participate  
6 in this program if it appears from the record that the inmate has  
7 not satisfactorily complied with reasonable rules and regulations  
8 while in custody. An inmate shall be eligible for participation in  
9 an alternative custody program only if the secretary or his or her  
10 designee concludes that the inmate meets the criteria for program  
11 participation established under this section and that the inmate's  
12 participation is consistent with any reasonable rules and regulations  
13 prescribed by the secretary.

14 (1) The rules and regulations and administrative policies of the  
15 program shall be written and shall be given or made available to  
16 any participant upon request.

17 (2) The secretary or his or her designee shall have the sole  
18 discretion concerning whether to permit program participation as  
19 an alternative to custody in state prison.

20 (i) The secretary or his or her designee shall permit program  
21 participants to seek and retain employment in the community,  
22 attend psychological counseling sessions or educational or  
23 vocational training classes, or seek medical and dental assistance.  
24 Willful failure of the program participant to return to the place of  
25 detention not later than the expiration of any period of time during  
26 which he or she is authorized to be away from the place of  
27 detention pursuant to this section, unauthorized departures from  
28 the place of detention, or tampering with or disabling, or attempting  
29 to tamper with or disable, an electronic monitoring device shall  
30 subject the participant to a return to custody pursuant to  
31 subdivisions (f) and (g). In addition, participants may be subject  
32 to forfeiture of credits pursuant to the provisions of Section 2932,  
33 or to discipline for violation of rules established by the secretary.

34 (j) (1) Notwithstanding any other law, the secretary or his or  
35 her designee shall provide the information specified in paragraph  
36 (2) regarding participants in an alternative custody program to the  
37 law enforcement agencies of the jurisdiction in which persons  
38 participating in an alternative custody program reside.

39 (2) The information required by paragraph (1) shall consist of  
40 the following:

- 1 (A) The participant’s name, address, and date of birth.
- 2 (B) The offense committed by the participant.
- 3 (C) The period of time the participant will be subject to an
- 4 alternative custody program.
- 5 (3) Any information received by a law enforcement agency
- 6 pursuant to this subdivision shall be used only for the purpose of
- 7 monitoring the impact of an alternative custody program on the
- 8 community.
- 9 (k) It is the intent of the Legislature that the alternative custody
- 10 program established under this section maintain the highest public
- 11 confidence, credibility, and public safety. In the furtherance of
- 12 these standards, the secretary may administer an alternative custody
- 13 program pursuant to written contracts with appropriate public
- 14 agencies or entities to provide specified program services. No
- 15 public agency or entity entering into a contract may itself employ
- 16 any person who is in an alternative custody program.
- 17 (l) An inmate participating in this program must voluntarily
- 18 agree to all of the provisions of the program in writing, including
- 19 that he or she may be returned to confinement at any time with or
- 20 without cause, and shall not be charged fees or costs for the
- 21 program.
- 22 (m) The secretary shall adopt emergency regulations specifically
- 23 governing participants in this program.
- 24 (n) For purposes of this section, “primary caregivers of
- 25 dependent children” means persons who are those primarily
- 26 responsible for the care and upbringing of one or more children.
- 27 (o) If any phrase, clause, sentence, or provision of this section
- 28 or application thereof to any person or circumstance is held invalid,
- 29 such invalidity shall not affect any other phrase, clause, sentence,
- 30 or provision or application of this section, which can be given
- 31 effect without the invalid phrase, clause, sentence, or provision or
- 32 application and to this end the provisions of this section are
- 33 declared to be severable.

O