

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1266

Introduced by Senator Liu

(Principal coauthor: Assembly Member Bonnie Lowenthal)

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1266, as amended, 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, *pregnant individuals*, 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 *(a) The incarceration rate for female offenders has doubled*
27 *over the last 20 years. As a result, California now has about 10,000*
28 *incarcerated women, which is more than any other state.*
29 *(b) Nearly 70 percent of female inmates are nonviolent*
30 *offenders. Two-thirds of female inmates were convicted of property*
31 *or drug-related crimes.*
32 *(c) While over half of the men in prison were incarcerated for*
33 *violent crimes, only 30 percent of women were convicted of*
34 *violence.*

1 *(d) Female inmates are more likely to be victims of violent*
2 *crimes than to be the perpetrators. Four in 10 female inmates were*
3 *physically or sexually abused before 18 years of age.*

4 *(e) Over two-thirds of women are classified as low risk by the*
5 *prison classification system. However, women are often held in*
6 *more secure environments than their custody classifications would*
7 *warrant.*

8 *(f) Approximately 67 percent of incarcerated women are*
9 *mothers, and many of them are single parents. Most of California's*
10 *incarcerated mothers are the primary care givers of dependent*
11 *children and hope to return home to their children. While the vast*
12 *majority of children of incarcerated men continue to live with their*
13 *mothers, children of incarcerated women are more likely to end*
14 *up living with other relatives or in foster care.*

15 *(g) Separating mothers from children has a substantial impact*
16 *on their futures. Children of inmates are much more likely than*
17 *their peers to become incarcerated. Research suggests that mothers*
18 *who are able to maintain a relationship with their children are*
19 *less likely to return to prison.*

20 *(h) To break the cycle of incarceration, California must adopt*
21 *policies that facilitate parenting and family reunification.*

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

23 1170.05. (a) Notwithstanding any other law, the Secretary of
24 the Department of Corrections and Rehabilitation is authorized to
25 offer a program under which female inmates and inmates who
26 were primary caregivers of dependent children immediately prior
27 to incarceration, as specified in subdivision (c), who are not
28 precluded by subdivision (d), and who have been committed to
29 state prison may be allowed to participate in a voluntary alternative
30 custody program as defined in subdivision (b) in lieu of their
31 confinement in state prison. In order to qualify for the program an
32 offender need not be confined in an institution under the
33 jurisdiction of the Department of Corrections and Rehabilitation.
34 Under this program, one day of participation in an alternative
35 custody program shall be in lieu of one day of incarceration in a
36 state prison. Participants in the program shall receive any sentence
37 reduction credits that they would have received had they served
38 their sentence in a state prison, and shall be subject to denial and
39 loss of credit pursuant to subdivision (a) of Section 2932. The
40 department may enter into contracts with county agencies,

1 not-for-profit organizations, for-profit organizations, and others
2 in order to promote alternative custody placements.

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

5 (1) Confinement to a residential home during the hours
6 designated by the department.

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

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

11 (c) Except as provided by subdivision (d), female inmates,
12 *pregnant individuals*, and inmates who were primary caregivers
13 of dependent children immediately prior to incarceration sentenced
14 to state prison for a determinate term of imprisonment pursuant to
15 Section 1170, and only those persons, shall be eligible to participate
16 in the alternative custody program authorized by this section.

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

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

22 (2) The person has a current or prior conviction for an offense
23 that requires the person to register as a sex offender as provided
24 in Chapter 5.5 (commencing with Section 290) of Title 9 of Part
25 1.

26 (3) The person was screened by the department using a validated
27 risk assessment tool and determined to pose a high risk to ~~reoffend~~
28 *commit a violent offense*.

29 (4) The person has a history, within the last 10 years, of escape
30 *from a facility* while under juvenile or adult custody, including,
31 but not limited to, any detention facility, ~~group home, treatment~~
32 ~~facility~~, camp, jail, or state prison facility.

33 (e) An alternative custody program shall include the use of
34 electronic monitoring, global positioning system devices, or other
35 supervising devices for the purpose of helping to verify a
36 participant's compliance with the rules and regulations of the
37 program. The devices shall not be used to eavesdrop or record any
38 conversation, except a conversation between the participant and
39 the person supervising the participant, in which case the recording

1 of such a conversation is to be used solely for the purposes of voice
2 identification.

3 (f) (1) *It is the intent of the Legislature that the department*
4 *shall be allocated in its budget 50 percent of the savings created*
5 *by Section 1170.5, once savings are achieved, to administer*
6 *evidence-based practices to participants placed in alternative*
7 *custody. In order to implement alternative custody for the*
8 *population specified in subdivision (c), the department shall create,*
9 *and the participant shall agree to and fully participate in, a plan*
10 *of evidence-based programs and services that will aid in the*
11 *successful reentry into society while participating in alternative*
12 *custody.*

13 (2) *The department shall collaborate with local law enforcement*
14 *and community-based programs that administer evidence-based*
15 *practices in order to prevent recidivism among individuals placed*
16 *in alternative custody and assist in reentry into society.*

17 (3) *For purposes of this section, “evidence-based practices”*
18 *means supervision policies, procedures, programs, and practices*
19 *demonstrated by scientific research to reduce recidivism among*
20 *individuals under probation, parole, or postrelease supervision.*

21 (f)

22 (g) The secretary shall prescribe reasonable rules and regulations
23 under which the alternative custody program shall operate. The
24 department shall adopt regulations necessary to effectuate this
25 section, including emergency regulations as provided under Section
26 5058.3 and adopted pursuant to the Administrative Procedure Act
27 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code). The participant
29 shall be informed in writing that he or she shall comply with the
30 rules and regulations of the program, including, but not limited to,
31 the following rules:

32 (1) The participant shall remain within the interior premises of
33 his or her residence during the hours designated by the secretary
34 or his or her designee.

35 (2) The participant shall be subject to search and seizure by a
36 parole officer or other peace officer at any time of the day or night,
37 with or without cause. In addition, the participant shall admit any
38 peace officer designated by the secretary or his or her designee
39 into the participant’s residence at any time for purposes of verifying
40 the participant’s compliance with the conditions of his or her

1 detention. Prior to participation in the alternative custody program,
2 all participants shall agree in writing to these terms and conditions.

3 (3) The secretary or his or her designee may immediately retake
4 the participant into custody to serve the balance of his or her
5 sentence if the electronic monitoring or supervising devices are
6 unable for any reason to properly perform their function at the
7 designated place of detention, if the participant fails to remain
8 within the place of detention as stipulated in the agreement, or if
9 the participant for any other reason no longer meets the established
10 criteria under this section.

11 ~~(g)~~

12 (h) Whenever a peace officer supervising a participant has
13 reasonable suspicion to believe that the participant is not complying
14 with the rules or conditions of the program, or that the electronic
15 monitoring devices are unable to function properly in the
16 designated place of confinement, the peace officer may, under
17 general or specific authorization of the secretary or his or her
18 designee, and without a warrant of arrest, retake the participant
19 into custody to complete the remainder of the original sentence.

20 ~~(h)~~

21 (i) Nothing in this section shall be construed to require the
22 secretary or his or her designee to allow an inmate to participate
23 in this program if it appears from the record that the inmate has
24 not satisfactorily complied with reasonable rules and regulations
25 while in custody. An inmate shall be eligible for participation in
26 an alternative custody program only if the secretary or his or her
27 designee concludes that the inmate meets the criteria for program
28 participation established under this section and that the inmate's
29 participation is consistent with any reasonable rules and regulations
30 prescribed by the secretary.

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

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

37 ~~(i)~~

38 (j) The secretary or his or her designee shall permit program
39 participants to seek and retain employment in the community,
40 attend psychological counseling sessions or educational or

1 vocational training classes, or seek medical and dental assistance.
2 Willful failure of the program participant to return to the place of
3 detention not later than the expiration of any period of time during
4 which he or she is authorized to be away from the place of
5 detention pursuant to this section, unauthorized departures from
6 the place of detention, or tampering with or disabling, or attempting
7 to tamper with or disable, an electronic monitoring device shall
8 subject the participant to a return to custody pursuant to
9 subdivisions ~~(f) and (g)~~ (g) and (h). In addition, participants may
10 be subject to forfeiture of credits pursuant to the provisions of
11 Section 2932, or to discipline for violation of rules established by
12 the secretary.

13 ~~(j)~~

14 (k) (1) Notwithstanding any other law, the secretary or his or
15 her designee shall provide the information specified in paragraph
16 (2) regarding participants in an alternative custody program to the
17 law enforcement agencies of the jurisdiction in which persons
18 participating in an alternative custody program reside.

19 (2) The information required by paragraph (1) shall consist of
20 the following:

21 (A) The participant's name, address, and date of birth.

22 (B) The offense committed by the participant.

23 (C) The period of time the participant will be subject to an
24 alternative custody program.

25 (3) Any information received by a law enforcement agency
26 pursuant to this subdivision shall be used only for the purpose of
27 monitoring the impact of an alternative custody program on the
28 community.

29 ~~(k)~~

30 (l) It is the intent of the Legislature that the alternative custody
31 program established under this section maintain the highest public
32 confidence, credibility, and public safety. In the furtherance of
33 these standards, the secretary may administer an alternative custody
34 program pursuant to written contracts with appropriate public
35 agencies or entities to provide specified program services. No
36 public agency or entity entering into a contract may itself employ
37 any person who is in an alternative custody program.

38 ~~(t)~~

39 (m) An inmate participating in this program must voluntarily
40 agree to all of the provisions of the program in writing, including

1 that he or she may be returned to confinement at any time with or
2 without cause, and shall not be charged fees or costs for the
3 program.

4 ~~(m)~~

5 (n) The secretary shall adopt emergency regulations specifically
6 governing participants in this program.

7 ~~(n)~~

8 (o) For purposes of this section, “primary caregivers of
9 dependent children” means persons who are those primarily
10 responsible for the care and upbringing of one or more children.

11 ~~(o)~~

12 (p) If any phrase, clause, sentence, or provision of this section
13 or application thereof to any person or circumstance is held invalid,
14 such invalidity shall not affect any other phrase, clause, sentence,
15 or provision or application of this section, which can be given
16 effect without the invalid phrase, clause, sentence, or provision or
17 application and to this end the provisions of this section are
18 declared to be severable.