

ASSEMBLY BILL

No. 446

Introduced by Assembly Member Carter

February 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 446, as introduced, Carter. Inmates: alternative custody.

Existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates, pregnant inmates, or 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. Existing law defines an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility that offers appropriate services. Existing law authorizes 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.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

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

1 SECTION 1. Section 1170.05 of the Penal Code is amended
2 to read:

3 1170.05. (a) Notwithstanding any other law, the Secretary of
4 the Department of Corrections and Rehabilitation is authorized to
5 offer a program under which female inmates, pregnant inmates,
6 or inmates who were primary caregivers of dependent children
7 immediately prior to incarceration, as specified in subdivision (c),
8 who are not precluded by subdivision (d), and who have been
9 committed to state prison may be allowed to participate in a
10 voluntary alternative custody program as defined in subdivision
11 (b) in lieu of their confinement in state prison. In order to qualify
12 for the program an offender need not be confined in an institution
13 under the jurisdiction of the Department of Corrections and
14 Rehabilitation. Under this program, one day of participation in an
15 alternative custody program shall be in lieu of one day of
16 incarceration in the state prison. Participants in the program shall
17 receive any sentence reduction credits that they would have
18 received had they served their sentence in the state prison, and
19 shall be subject to denial and loss of credit pursuant to subdivision
20 (a) of Section 2932. The department may enter into contracts with
21 county agencies, not-for-profit organizations, for-profit
22 organizations, and others in order to promote alternative custody
23 placements.

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

26 (1) Confinement to a residential home during the hours
27 designated by the department.

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

30 (3) Confinement to a transitional care facility that offers
31 appropriate services.

32 (c) Except as provided by subdivision (d), female inmates,
33 pregnant inmates, or inmates who were primary caregivers of
34 dependent children immediately prior to incarceration sentenced
35 to state prison for a determinate term of imprisonment pursuant to
36 Section 1170, and only those persons, shall be eligible to participate
37 in the alternative custody program authorized by this section.

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

4 (1) The person has a current or prior conviction for a violent
5 felony as defined in Section 667.5.

6 (2) The person has a current or prior conviction for a serious
7 felony as defined in Sections 1192.7 and 1192.8.

8 (3) The person has a current or prior conviction for an offense
9 that requires the person to register as a sex offender as provided
10 in Chapter 5.5 (commencing with Section 290) of Title 9 of Part
11 1.

12 (4) The person was screened by the department using a validated
13 risk assessment tool and determined to pose a high risk to commit
14 a violent offense.

15 (5) The person has a history, within the last 10 years, of escape
16 from a facility while under juvenile or adult custody, including,
17 but not limited to, any detention facility, camp, jail, or state prison
18 facility.

19 (e) An alternative custody program shall include the use of
20 electronic monitoring, global positioning system devices, or other
21 supervising devices for the purpose of helping to verify a
22 participant's compliance with the rules and regulations of the
23 program. The devices shall not be used to eavesdrop or record any
24 conversation, except a conversation between the participant and
25 the person supervising the participant, in which case the recording
26 of such a conversation is to be used solely for the purposes of voice
27 identification.

28 (f) (1) In order to implement alternative custody for the
29 population specified in subdivision (c), the department shall create,
30 and the participant shall agree to and fully participate in, an
31 individualized treatment and rehabilitation plan of evidence-based
32 programs and services that will aid in the successful reentry into
33 society while he or she takes part in alternative custody.

34 (2) The department shall collaborate with local law enforcement
35 and community-based programs that administer evidence-based
36 practices in order to prevent recidivism among individuals placed
37 in alternative custody and assist in reentry into society. Mandatory
38 case management services shall be provided to support
39 rehabilitation, and to track the progress and individualized
40 treatment plan compliance of the inmate.

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

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

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

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

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

34 (h) Whenever a peace officer supervising a participant has
35 reasonable suspicion to believe that the participant is not complying
36 with the rules or conditions of the program, or that the electronic
37 monitoring devices are unable to function properly in the
38 designated place of confinement, the peace officer may, under
39 general or specific authorization of the secretary or his or her

1 designee, and without a warrant of arrest, retake the participant
2 into custody to complete the remainder of the original sentence.

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

13 (1) The rules and regulations and administrative policies of the
14 program shall be written and shall be given or made available to
15 the participant upon assignment to the alternative custody program.

16 (2) The secretary or his or her designee shall have the sole
17 discretion concerning whether to permit program participation as
18 an alternative to custody in state prison. A risk and needs
19 assessment shall be completed on each inmate to assist in the
20 determination of eligibility for participation and the type of
21 alternative custody.

22 (j) The secretary or his or her designee shall permit program
23 participants to seek and retain employment in the community,
24 attend psychological counseling sessions or educational or
25 vocational training classes, participate in life skills or parenting
26 training, utilize substance abuse treatment services, or seek medical
27 and dental assistance based upon the participant's individualized
28 treatment and release plan. Participation in other rehabilitative
29 services and programs may be approved by the case manager if it
30 is specified as a requirement of the inmate's individualized
31 treatment and rehabilitative case plan. Willful failure of the
32 program participant to return to the place of detention not later
33 than the expiration of any period of time during which he or she
34 is authorized to be away from the place of detention pursuant to
35 this section, unauthorized departures from the place of detention,
36 or tampering with or disabling, or attempting to tamper with or
37 disable, an electronic monitoring device shall subject the participant
38 to a return to custody pursuant to subdivisions (g) and (h). In
39 addition, participants may be subject to forfeiture of credits

1 pursuant to the provisions of Section 2932, or to discipline for
2 violation of rules established by the secretary.

3 (k) (1) Notwithstanding any other law, the secretary or his or
4 her designee shall provide the information specified in paragraph
5 (2) regarding participants in an alternative custody program to the
6 law enforcement agencies of the jurisdiction in which persons
7 participating in an alternative custody program reside.

8 (2) The information required by paragraph (1) shall consist of
9 the following:

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

11 (B) The offense committed by the participant.

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

14 (3) The information received by a law enforcement agency
15 pursuant to this subdivision may be used for the purpose of
16 monitoring the impact of an alternative custody program on the
17 community.

18 (l) It is the intent of the Legislature that the alternative custody
19 program established under this section maintain the highest public
20 confidence, credibility, and public safety. In the furtherance of
21 these standards, the secretary may administer an alternative custody
22 program pursuant to written contracts with appropriate public
23 agencies or entities to provide specified program services. No
24 public agency or entity entering into a contract may itself employ
25 any person who is in an alternative custody program. The
26 department shall determine the recidivism rate of each participant
27 in an alternative custody program.

28 (m) An inmate participating in this program must voluntarily
29 agree to all of the provisions of the program in writing, including
30 that he or she may be returned to confinement at any time with or
31 without cause, and shall not be charged fees or costs for the
32 program.

33 (n) The state shall retain responsibility for the medical, dental,
34 and mental health needs of individuals participating in the
35 alternative custody program.

36 (o) The secretary shall adopt emergency regulations specifically
37 governing participants in this program.

38 (p) A person is a primary caregiver of a dependent child for
39 purposes of this section if all of the following criteria are met:

1 (1) The child is the inmate's son, daughter, stepchild, adopted
2 child, or foster child.

3 (2) The child is 17 years of age or less at the time of the inmate's
4 placement into the alternative custody program.

5 (3) The child resided with the inmate for the majority of the
6 year preceding the inmate's arrest.

7 (4) At the time the inmate was arrested, the inmate had physical
8 custody of the child and was primarily responsible for the care and
9 upbringing of the child.

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

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