

ASSEMBLY BILL

No. 2106

Introduced by Assembly Member Quirk

February 20, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2106, as introduced, Quirk. Inmates: alternative custody.

Existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates 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 provides that female inmates sentenced to determinate sentences shall be eligible for participation in the program, subject to certain disqualifying criteria.

This bill would provide that an existing psychiatric or medical condition that requires ongoing care is not a basis for excluding an inmate from eligibility for the program. The bill would provide more specific timeframes for participation in the alternative custody program. The bill would require the Secretary of the Department of Corrections and Rehabilitation or his or her designee to respond to an applicant within two weeks of his or her application to inform the inmate that the application was received, and to notify the inmate of any exclusionary criteria and case-by-case criteria. The bill would require an individualized treatment and rehabilitation plan to be developed during

the two weeks following the notice of receipt of the application, in consultation with the inmate, during which time the decision of whether to accept the inmate into the program would be made, and during which time the secretary or his or her designee would provide a written notice to the inmate of acceptance or denial of participation in the program. The bill would require an inmate to be released to the program no later than 5 business days following notice of acceptance into the program. The bill would require a notice of denial to explain the reasons the inmate has been denied participation in the program. The bill would require the secretary or his or her designee to keep a record of the application and notice of denial for participation. The bill would authorize an inmate to, 30 days after the notice of denial, reapply for participation in the program.

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

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

3 (1) Confinement to a residential home during the hours
4 designated by the department.

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

7 (3) Confinement to a transitional care facility that offers
8 appropriate services.

9 (c) Except as provided by subdivision (d), female inmates
10 sentenced to state prison for a determinate term of imprisonment
11 pursuant to Section 1170, and only those persons, shall be eligible
12 to participate in the alternative custody program authorized by this
13 section. *An existing psychiatric or medical condition that requires*
14 *ongoing care is not a basis for excluding an inmate from eligibility*
15 *to participate in the alternative custody program authorized by*
16 *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 conviction for a violent felony as
21 defined in Section 667.5.

22 (2) The person has a current conviction for a serious felony as
23 defined in Sections 1192.7 and 1192.8.

24 (3) The person has a current or prior conviction for an offense
25 that requires the person to register as a sex offender as provided
26 in Chapter 5.5 (commencing with Section 290) of Title 9 of Part
27 1.

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

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

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

1 the person supervising the participant, in which case the recording
2 of such a conversation is to be used solely for the purposes of voice
3 identification.

4 (f) (1) In order to implement alternative custody for the
5 population specified in subdivision (c), the department shall create,
6 and the participant shall agree to and fully participate in, an
7 individualized treatment and rehabilitation plan. When available
8 and appropriate for the individualized treatment and rehabilitation
9 plan, the department shall prioritize the use of evidence-based
10 programs and services that will aid in the successful reentry into
11 society while she takes part in alternative custody. Case
12 management services shall be provided to support rehabilitation
13 and to track the progress and individualized treatment plan
14 compliance of the inmate.

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

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

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

33 (2) The participant shall be subject to search and seizure by a
34 peace officer at any time of the day or night, with or without cause.
35 In addition, the participant shall admit any peace officer designated
36 by the secretary or his or her designee into the participant’s
37 residence at any time for purposes of verifying the participant’s
38 compliance with the conditions of her detention. Prior to
39 participation in the alternative custody program, all participants
40 shall agree in writing to these terms and conditions.

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

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

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

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

30 (2) The secretary or his or her designee shall have the sole
31 discretion concerning whether to permit program participation as
32 an alternative to custody in state prison. A risk and needs
33 assessment shall be completed on each inmate to assist in the
34 determination of eligibility for participation and the type of
35 alternative custody.

36 (j) *The secretary or his or her designee shall establish a timeline*
37 *for the application process. The secretary or his or her designee*
38 *shall respond to an applicant within two weeks of his or her*
39 *application to inform the inmate that the application was received,*
40 *and to notify the inmate of any exclusionary criteria and*

1 *case-by-case criteria. The individualized treatment and*
2 *rehabilitation plan described in subdivision (f) shall be developed*
3 *during the two weeks following the notice of receipt of the*
4 *application, in consultation with the inmate, during which time*
5 *the decision whether to accept the inmate into the program shall*
6 *be made, and the secretary or his or her designee shall provide a*
7 *written notice to the inmate of his or her acceptance or denial into*
8 *the program. The inmate shall be released to the program no later*
9 *than five business days following notice of acceptance into the*
10 *program. If the inmate is denied participation in the program, the*
11 *notice of denial shall explain the reason the inmate was denied.*
12 *The secretary or his or her designee shall keep a record of the*
13 *application and notice of denials for participation. The inmate*
14 *may, 30 days after the notice of denial, reapply for participation*
15 *in the program.*

16 ~~(j)~~

17 (k) The secretary or his or her designee shall permit program
18 participants to seek and retain employment in the community,
19 attend psychological counseling sessions or educational or
20 vocational training classes, participate in life skills or parenting
21 training, utilize substance abuse treatment services, or seek medical
22 and dental assistance based upon the participant's individualized
23 treatment and release plan. Participation in other rehabilitative
24 services and programs may be approved by the case manager if it
25 is specified as a requirement of the inmate's individualized
26 treatment and rehabilitative case plan. Willful failure of the
27 program participant to return to the place of detention not later
28 than the expiration of any period of time during which she is
29 authorized to be away from the place of detention pursuant to this
30 section, unauthorized departures from the place of detention, or
31 tampering with or disabling, or attempting to tamper with or
32 disable, an electronic monitoring device shall subject the participant
33 to a return to custody pursuant to subdivisions (g) and (h). In
34 addition, participants may be subject to forfeiture of credits
35 pursuant to the provisions of Section 2932, or to discipline for
36 violation of rules established by the secretary.

37 ~~(k)~~

38 (l) (1) Notwithstanding any other law, the secretary or his or
39 her designee shall provide the information specified in paragraph
40 (2) regarding participants in an alternative custody program to the

1 law enforcement agencies of the jurisdiction in which persons
2 participating in an alternative custody program reside.

3 (2) The information required by paragraph (1) shall consist of
4 the following:

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

6 (B) The offense committed by the participant.

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

9 (3) The information received by a law enforcement agency
10 pursuant to this subdivision may be used for the purpose of
11 monitoring the impact of an alternative custody program on the
12 community.

13 ~~(t)~~

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

24 ~~(n)~~

25 (n) An inmate participating in this program—~~must~~ *shall*
26 voluntarily agree to all of the provisions of the program in writing,
27 including that she may be returned to confinement at any time with
28 or without cause, and shall not be charged fees or costs for the
29 program.

30 ~~(o)~~

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

34 ~~(p)~~

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

37 ~~(q)~~

38 (q) If a phrase, clause, sentence, or provision of this section or
39 application thereof to a person or circumstance is held invalid, that
40 invalidity shall not affect any other phrase, clause, sentence, or

1 provision or application of this section, which can be given effect
2 without the invalid phrase, clause, sentence, or provision or
3 application and to this end the provisions of this section are
4 declared to be severable.

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