

Introduced by Senator LiuFebruary 12, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as introduced, Liu. Prisons: 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.

Except as specified, existing law requires the suspension of certain Medi-Cal benefits to an individual who is an inmate of a public institution. Existing law requires the state to retain responsibility for the medical, dental, and mental health needs of individuals participating in the alternative custody program.

This bill would additionally exclude a person who was sentenced to state prison pursuant to an initiative statute from participation in the program.

This bill would provide that an inmate's existing psychiatric or medical condition that requires ongoing care is not a basis for excluding the inmate from eligibility for the program.

The bill would also prescribe specific timeframes for, among other things, the review of an application to participate in the program and notifying an applicant when a determination has been made on that application. The bill would require a notice of denial to specify the reasons the inmate has been denied participation in the program, and authorize an inmate to reapply for participation in the program or appeal a denial, as specified.

The bill would also require the secretary or his or her designee to assist an individual participating in the alternative custody program in obtaining health care coverage, including, but not limited to, assistance with having suspended Medi-Cal benefits reinstated, applying for Medi-Cal benefits, or obtaining health care coverage under a private health plan or policy. The bill would require that, to the extent not covered by a participant’s health care coverage, the state would retain responsibility for the medical, dental, and mental health needs of individuals participating in the alternative custody 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

1 organizations, and others in order to promote alternative custody
2 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 that offers
10 appropriate services.

11 (c) Except as provided by subdivision (d), female inmates
12 sentenced to state prison for a determinate term of imprisonment
13 pursuant to Section 1170, and only those persons, ~~shall be~~ *are*
14 eligible to participate in the alternative custody program authorized
15 by this section.

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

19 (1) The person has a current conviction for a violent felony as
20 defined in Section 667.5.

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

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

27 (4) *The person was sentenced to state prison pursuant to an*
28 *initiative statute.*

29 ~~(4)~~

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

33 ~~(5)~~

34 (6) The person has a history, within the last 10 years, of escape
35 from a facility while under juvenile or adult custody, including,
36 but not limited to, any detention facility, camp, jail, or state prison
37 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) (1) 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, an
10 individualized treatment and rehabilitation plan. When available
11 and appropriate for the individualized treatment and rehabilitation
12 plan, the department shall prioritize the use of evidence-based
13 programs and services that will aid in the successful reentry into
14 society while she takes part in alternative custody. Case
15 management services shall be provided to support rehabilitation
16 and to track the progress and individualized treatment plan
17 compliance of the inmate.

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

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

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

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

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

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

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

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

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

39 (3) *An inmate's existing psychiatric or medical condition that*
40 *requires ongoing care is not a basis for excluding the inmate from*

1 *eligibility to participate in an alternative custody program*
2 *authorized by this section.*

3 *(j) The secretary or his or her designee shall establish a timeline*
4 *for the application process. The secretary or his or her designee*
5 *shall respond to an applicant within two weeks of his or her*
6 *application to inform the inmate that the application was received,*
7 *and to notify the inmate of the ineligibility criteria of the program.*
8 *The individualized treatment and rehabilitation plan described in*
9 *subdivision (f) shall be developed during the two weeks following*
10 *the notice of receipt of the application, in consultation with the*
11 *inmate, during which time the decision whether to accept the*
12 *inmate into the program shall be made, and the secretary or his*
13 *or her designee shall provide a written notice to the inmate of his*
14 *or her acceptance or denial into the program. The inmate shall*
15 *be released to the program no later than five business days*
16 *following notice of acceptance into the program. If the inmate is*
17 *denied participation in the program, the notice of denial shall*
18 *specify the reason the inmate was denied. The secretary or his or*
19 *her designee shall maintain a record of the application and notice*
20 *of denials for participation. The inmate may, 30 days after the*
21 *notice of denial, reapply for participation in the program, or appeal*
22 *the decision through normal grievance procedures.*

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

1 addition, participants may be subject to forfeiture of credits
2 pursuant to the provisions of Section 2932, or to discipline for
3 violation of rules established by the secretary.

4 ~~(k)~~

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

10 (2) The information required by paragraph (1) shall consist of
11 the following:

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

13 (B) The offense committed by the participant.

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

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

20 ~~(t)~~

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

31 ~~(m)~~

32 (n) An inmate participating in this program ~~must~~ shall
33 voluntarily agree to all of the provisions of the program in writing,
34 including that she may be returned to confinement at any time with
35 or without cause, and shall not be charged fees or costs for the
36 program.

37 (o) (1) *The secretary or his or her designee shall assist an*
38 *individual participating in the alternative custody program in*
39 *obtaining health care coverage, including, but not limited to,*
40 *assistance with having suspended Medi-Cal benefits reinstated,*

1 *applying for Medi-Cal benefits, or obtaining health care coverage*
2 *under a private health plan or policy.*

3 ~~(n) The~~

4 *(2) To the extent not covered by a participant's health care*
5 *coverage, the state shall retain responsibility for the medical,*
6 *dental, and mental health needs of individuals participating in the*
7 *alternative custody program.*

8 ~~(o)~~

9 *(p) The secretary shall adopt emergency regulations specifically*
10 *governing participants in this program.*

11 ~~(p)~~

12 *(q) If a phrase, clause, sentence, or provision of this section or*
13 *application thereof to a person or circumstance is held invalid, that*
14 *invalidity shall not affect any other phrase, clause, sentence, or*
15 *provision or application of this section, which can be given effect*
16 *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.*