

AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 219

Introduced by Senator Liu

February 12, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as amended, 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

1 shall be subject to denial and loss of credit pursuant to subdivision
2 (a) of Section 2932. The department may enter into contracts with
3 county agencies, not-for-profit organizations, for-profit
4 organizations, and others in order to promote alternative custody
5 placements.

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

8 (1) Confinement to a residential home during the hours
9 designated by the department.

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

12 (3) Confinement to a transitional care facility that offers
13 appropriate services.

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

19 (d) An inmate committed to the state prison who meets any of
20 the following criteria is not eligible to participate in the alternative
21 custody program:

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

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

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

30 ~~(4) The person was sentenced to state prison pursuant to an~~
31 ~~initiative statute.~~

32 ~~(5)~~

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

36 ~~(6)~~

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

1 (e) An alternative custody program shall include the use of
2 electronic monitoring, global positioning system devices, or other
3 supervising devices for the purpose of helping to verify a
4 participant's compliance with the rules and regulations of the
5 program. The devices shall not be used to eavesdrop or record any
6 conversation, except a conversation between the participant and
7 the person supervising the participant, in which case the recording
8 of such a conversation is to be used solely for the purposes of voice
9 identification.

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

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

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

36 (1) The participant shall remain within the interior premises of
37 her residence during the hours designated by the secretary or his
38 or her designee.

39 (2) The participant shall be subject to search and seizure by a
40 peace officer at any time of the day or night, with or without cause.

1 In addition, the participant shall admit any peace officer designated
2 by the secretary or his or her designee into the participant's
3 residence at any time for purposes of verifying the participant's
4 compliance with the conditions of her detention. Prior to
5 participation in the alternative custody program, all participants
6 shall agree in writing to these terms and conditions.

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

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

23 (i) This section does not require the secretary or his or her
24 designee to allow an inmate to participate in this program if it
25 appears from the record that the inmate has not satisfactorily
26 complied with reasonable rules and regulations while in custody.
27 An inmate is eligible for participation in an alternative custody
28 program only if the secretary or his or her designee concludes that
29 the inmate meets the criteria for program participation established
30 under this section and that the inmate's participation is consistent
31 with any reasonable rules and regulations prescribed by the
32 secretary.

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

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

1 determination of eligibility for participation and the type of
2 alternative custody.

3 (3) An inmate's existing psychiatric or medical condition that
4 requires ongoing care is not a basis for excluding the inmate from
5 eligibility to participate in an alternative custody program
6 authorized by this section.

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

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

1 tampering with or disabling, or attempting to tamper with or
2 disable, an electronic monitoring device shall subject the participant
3 to a return to custody pursuant to subdivisions (g) and (h). In
4 addition, participants may be subject to forfeiture of credits
5 pursuant to the provisions of Section 2932, or to discipline for
6 violation of rules established by the secretary.

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

12 (2) The information required by paragraph (1) shall consist of
13 the following:

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

15 (B) The offense committed by the participant.

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

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

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

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

36 (o) (1) The secretary or his or her designee shall assist an
37 individual participating in the alternative custody program in
38 obtaining health care coverage, including, but not limited to,
39 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 (2) To the extent not covered by a participant’s health care
4 coverage, the state shall retain responsibility for the medical, dental,
5 and mental health needs of individuals participating in the
6 alternative custody program.

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

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