

AMENDED IN SENATE JUNE 1, 2015  
AMENDED IN SENATE MARCH 26, 2015

**SENATE BILL**

**No. 219**

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**Introduced by Senator Liu**

February 12, 2015

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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 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, are eligible to  
14 participate in the alternative custody program authorized by this  
15 section.

16 (d) An inmate committed to the state prison who meets any of  
17 the following criteria is not eligible to participate in the alternative  
18 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 screened by the department using a validated  
28 risk assessment tool and determined to pose a high risk to commit  
29 a violent offense.

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

34 (e) An alternative custody program shall include the use of  
35 electronic monitoring, global positioning system devices, or other  
36 supervising devices for the purpose of helping to verify a  
37 participant's compliance with the rules and regulations of the  
38 program. The devices shall not be used to eavesdrop or record any  
39 conversation, except a conversation between the participant and  
40 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) In order to implement alternative custody for the  
4 population specified in subdivision (c), the department shall create,  
5 and the participant shall agree to and fully participate in, an  
6 individualized treatment and rehabilitation plan. When available  
7 and appropriate for the individualized treatment and rehabilitation  
8 plan, the department shall prioritize the use of evidence-based  
9 programs and services that will aid in the successful reentry into  
10 society while she takes part in alternative custody. Case  
11 management services shall be provided to support rehabilitation  
12 and to track the progress and individualized treatment plan  
13 compliance of the inmate.

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

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

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

32 (2) The participant shall be subject to search and seizure by a  
33 peace officer at any time of the day or night, with or without cause.  
34 In addition, the participant shall admit any peace officer designated  
35 by the secretary or his or her designee into the participant’s  
36 residence at any time for purposes of verifying the participant’s  
37 compliance with the conditions of her detention. Prior to  
38 participation in the alternative custody program, all participants  
39 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) This section does not require the secretary or his or her  
18 designee to allow an inmate to participate in this program if it  
19 appears from the record that the inmate has not satisfactorily  
20 complied with reasonable rules and regulations while in custody.  
21 An inmate is eligible for participation in an alternative custody  
22 program only if the secretary or his or her designee concludes that  
23 the inmate meets the criteria for program participation established  
24 under this section and that the inmate's participation is consistent  
25 with any reasonable rules and regulations prescribed by the  
26 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 (3) An inmate's existing psychiatric or medical condition that  
37 requires ongoing care is not a basis for excluding the inmate from  
38 eligibility to participate in an alternative custody program  
39 authorized by this section.

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

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.