

AMENDED IN ASSEMBLY JULY 9, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE MARCH 26, 2015

**SENATE BILL**

**No. 219**

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**Introduced by Senator Liu**  
*(Principal coauthor: Senator Hancock)*

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 program~~, notifying an applicant when a determination has been made on that ~~application~~. *application, the development of an individualized treatment and rehabilitation plan, and release of the inmate into the program.* 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

1 receive any sentence reduction credits that they would have  
2 received had they served their sentence in the state prison, and  
3 shall be subject to denial and loss of credit pursuant to subdivision  
4 (a) of Section 2932. The department may enter into contracts with  
5 county agencies, not-for-profit organizations, for-profit  
6 organizations, and others in order to promote alternative custody  
7 placements.

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

10 (1) Confinement to a residential home during the hours  
11 designated by the department.

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

14 (3) Confinement to a transitional care facility that offers  
15 appropriate services.

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

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

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

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

28 (3) The person has a current or prior conviction for an offense  
29 that requires the person to register as a sex offender as provided  
30 in Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
31 1.

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

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

39 (e) An alternative custody program shall include the use of  
40 electronic monitoring, global positioning system devices, or other

1 supervising devices for the purpose of helping to verify a  
2 participant's compliance with the rules and regulations of the  
3 program. The devices shall not be used to eavesdrop or record any  
4 conversation, except a conversation between the participant and  
5 the person supervising the participant, in which case the recording  
6 of such a conversation is to be used solely for the purposes of voice  
7 identification.

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

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

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

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

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

1 residence at any time for purposes of verifying the participant's  
2 compliance with the conditions of her detention. Prior to  
3 participation in the alternative custody program, all participants  
4 shall agree in writing to these terms and conditions.

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

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

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

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

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

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

5 (j) The secretary or his or her designee shall establish a timeline  
6 for the application process. The secretary or his or her designee  
7 shall respond to an applicant within two weeks of her application  
8 to inform the inmate that the application was received, and to notify  
9 the inmate of the eligibility criteria of the program. The secretary  
10 or his or her designee shall provide a written notice to the inmate  
11 of her acceptance or denial into the program. The individualized  
12 treatment and rehabilitation plan described in subdivision (f) shall  
13 be developed, in consultation with the inmate, after the applicant  
14 has been found *potentially* eligible for participation in the program  
15 and no later than 30 calendar days after the *potential* eligibility  
16 determination. ~~The~~ *Except as necessary to comply with any release*  
17 *notification requirements, the inmate shall be released to the*  
18 *program no later than five seven business days following notice*  
19 *of acceptance into the program. program, or if this is not possible*  
20 *in the case of an inmate to be placed in a residential drug or*  
21 *treatment program or in a transitional care facility, the first day*  
22 *a contracted bed becomes available at the requested location. If*  
23 *the inmate is denied participation in the program, the notice of*  
24 *denial shall specify the reason the inmate was denied. The secretary*  
25 *or his or her designee shall maintain a record of the application*  
26 *and notice of denials for participation. The inmate may appeal the*  
27 *decision through normal grievance procedures or reapply for*  
28 *participation in the program 30 days after the notice of the denial.*

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

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

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

14 (2) The information required by paragraph (1) shall consist of  
15 the following:

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

17 (B) The offense committed by the participant.

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

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

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

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

38 (o) (1) The secretary or his or her designee shall assist an  
39 individual participating in the alternative custody program in  
40 obtaining health care coverage, including, but not limited to,

1 assistance with having suspended Medi-Cal benefits reinstated,  
2 applying for Medi-Cal benefits, or obtaining health care coverage  
3 under a private health plan or policy.

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

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

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