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**SB-219 Prisons: alternative custody.** (2015-2016)

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**Senate Bill No. 219**

**CHAPTER 762**

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

[ Approved by Governor October 10, 2015. Filed with Secretary of State October 10, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 219, 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, notifying an applicant when a determination has been made on that 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 Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 1170.05 of the Penal Code is amended to read:

**1170.05.** (a) Notwithstanding any other law, the Secretary of the Department of Corrections and Rehabilitation is authorized to offer a program under which female inmates as specified in subdivision (c), who are not precluded by subdivision (d), and who have been committed to state prison may be allowed to participate in a voluntary alternative custody program as defined in subdivision (b) in lieu of their confinement in state prison. In order to qualify for the program an offender need not be confined in an institution under the jurisdiction of the Department of Corrections and Rehabilitation. Under this program, one day of participation in an alternative custody program shall be in lieu of one day of incarceration in the state prison. Participants in the program shall receive any sentence reduction credits that they would have received had they served their sentence in the state prison, and shall be subject to denial and loss of credit pursuant to subdivision (a) of Section 2932. The department may enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements.

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

- (1) Confinement to a residential home during the hours designated by the department.
- (2) Confinement to a residential drug or treatment program during the hours designated by the department.
- (3) Confinement to a transitional care facility that offers appropriate services.

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

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

- (1) The person has a current conviction for a violent felony as defined in Section 667.5.
- (2) The person has a current conviction for a serious felony as defined in Sections 1192.7 and 1192.8.
- (3) The person has a current or prior conviction for an offense that requires the person to register as a sex offender as provided in Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.
- (4) The person was screened by the department using a validated risk assessment tool and determined to pose a high risk to commit a violent offense.
- (5) The person has a history, within the last 10 years, of escape from a facility while under juvenile or adult custody, including, but not limited to, any detention facility, camp, jail, or state prison facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The offense committed by the participant.

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

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

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

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

(o) (1) The secretary or his or her designee shall 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.

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

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

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