

Date of Hearing: April 19, 2022  
Counsel: Andrew Ironside

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2167 (Kalra) – As Amended April 18, 2022

**REVISED**

**SUMMARY:** Declares the intent of the Legislature that the disposition of any criminal case use the least restrictive means possible, and requires the court presiding over a criminal matter to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation. **Specifically**, this bill:

- 1) States the intent of the Legislature that the disposition of any criminal case use the least restrictive means.
- 2) Requires the court presiding over a criminal matter to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversions, restorative justice, and probation.
- 3) Declares that California's overreliance on incarceration has failed to improve public safety while disproportionately harming vulnerable and marginalized communities.
- 4) Declares that California can safely reduce the number of people behind bars by making greater use of alternatives to incarceration, which often lead to better outcomes than incarceration, including reduced rearrest rates, better economic outcomes, and reduced racial disparities.
- 5) Declares that victims and survivors of violent crime report greater satisfaction when the case is resolved through restorative justice than do victims and survivors whose case is resolved through the traditional criminal court process.
- 6) Declares that the California Committee on Revision of the Penal Code has recommended that California adopt a Penal Code section stating that alternatives to incarceration shall be considered in every case, similar to existing law in the federal system and in other states.
- 7) Declares that it is the intent of the Legislature that the court presiding over a criminal matter impose an alternative to incarceration, except where incarceration is necessary to prevent physical injury to others or the interests of justice would best be served by incarceration.

**EXISTING LAW:**

- 1) Provides that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. (Pen. Code, § 1170, subd. (a)(1).)

- 2) Creates the Committee on Revision of the Penal Code within the California Law Revision Commission. (Gov. Code, § 8280, subd. (b).)
- 3) Requires the Committee on Revision of the Penal Code to study and make recommendations on revision of the Penal Code to establish alternatives to incarceration that will aid in the rehabilitation of offenders and improve the system of parole and probation. (Gov. Code, § 8290.5, subd. (a).)
- 4) Declares the Legislature's commitment to reducing recidivism among criminal offenders. (Pen. Code, § 3450, subd. (b)(1).)
- 5) States that policies that rely on the reincarceration of parolees for technical violations do not result in improved public safety. (Pen. Code, § 3450, subd. (b)(3).)
- 6) Commits the state to reinvesting criminal justice resources to support community corrections programs and evidence-based practices that will achieve improved public safety returns on the state's substantial investment in its criminal justice system. (Pen. Code, § 3450, subd. (b)(4).)
- 7) Provides that the purpose of mental health diversion is to promote the following:
  - a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;
  - b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and,
  - c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)
- 8) Authorizes the court, after considering the positions of the defense and prosecution, to grant pretrial diversion to a defendant if the defendant meets specified criteria. (Pen. Code, § 1001.36, subds. (a) and (b).)
- 9) Authorizes diversion programs for specified crimes including for drug abuse (Pen. Code, §§ 1000 et seq.), for child abuse (Pen. Code, § 1001.12 et seq.), for contributing to the delinquency of another (Pen. Code, §§ 1001.70 et seq.), for writing bad checks (Pen. Code, §§ 1001.60 et seq.) and for veterans (Pen. Code, §§ 1001.80 et seq.) and for persons with mental disorders (Pen. Code, §§ 1001.35 et seq.).
- 10) Provides that the counties of Alameda, Butte, Napa, Nevada, and Santa Clara may establish a pilot program to operate a deferred entry of judgment pilot program for certain eligible, young-adult defendants. (Pen. Code, § 1000.7, subd. (a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Existing law contains numerous examples of mandatory minimum sentences, yet despite ongoing criminal justice reform efforts, there are very few sections that limit or discourage incarceration. This is in spite of the fact that alternatives to incarceration and diversion programs have repeatedly been shown to not only be more effective, but can also lead to reduced prison and jail costs, lower recidivism rates, and is one way to address harmful racial disparities in the criminal justice system.

“AB 2167 requires courts to consider alternatives to incarceration and states it is the intent of the Legislature that sentencing be the least restrictive means possible. This bill adopts a key recommendation from the Committee on Penal Code Revision’s 2021 report and catches California up to states like Alabama, Arkansas, Minnesota, Tennessee, and New York which have already adopted statutes requiring sentences only be as severe as necessary.”

- 2) **Committee on Revision of the Penal Code Recommendations:** The Committee on Revision of the Penal Code (CRPC) was established to study and recommend statutory reforms to the Penal Code relating to, among other things, alternatives to incarceration. (Gov. Code, § 8290.5, subd. (a)(3).) In its 2021 Annual Report, CRPC recommended “[a]dd[ing] a statement to the Penal Code that the disposition of any criminal case shall use the least restrictive means possible, including but not limited to diversion, restorative justice, probation, or incarceration.” (CRPC, 2021 Annual Report (Dec. 2021) at p. 20 <[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)> [last visited March 31, 2022].) According to CRPC, “California can safely reduce the number of people behind bars by modifying the Penal Code to explicitly encourage more restraint in the use of incarceration. While the Penal Code has numerous sections that require judges to impose incarceration, it contains few statements limiting or discouraging its use.” (*Ibid.*) By adding such a statement, the state “can reduce our state’s reliance on incarceration while leaving judges with the option to incarcerate when necessary to protect public safety.” (*Id.* at p. 24.) This bill seeks to implement CRPC’s recommendation.
- 3) **Commission on Alternatives to Incarceration:** Currently pending before the Assembly Appropriations Committee, AB 1670 (Bryan) would create the Commission on Alternatives to Incarceration to research and develop policy recommendations for, among other things, alternatives to incarceration. According to the bill’s author, “California needs to shift its focus from the costly and ineffective solution of incarceration, to integrating alternatives to incarceration that provides [sic] resources and services that are specific to a person’s needs.” As noted in the analysis of AB 1670, although the commission’s mandate are different than that of the CRPC, there would be limited overlap in their missions—both would research and develop policy recommendations on alternatives to incarceration. Future recommendations by the Commission may inform available alternatives that courts are required to consider under this bill.
- 4) **Argument in Support:** According to *Initiate Justice*, “The 2021 report by the Committee on Revision of the Penal Code found that California law ‘lacks a clear statement about when incarceration is appropriate, unlike federal and other states’ laws.’ This lack of clarity has put California behind other states such as Alabama, Arkansas, Minnesota, and Tennessee, which require sentences to be the least restrictive means possible or only as severe as necessary. New York law explicitly states that the term of confinement should be consistent with public safety, the gravity of the offense, and the rehabilitative needs of the defendant.

“Alternatives to incarceration, including probation, community service, restorative justice, collaborative courts, and diversion programs, are not only substantially less costly than incarceration, but are also more effective – several case studies have pointed to evidence of diversion being a more effective method of decreasing future convictions. According to the National Institute on Drug Abuse, ‘every dollar invested in addiction treatment programs yields a return of between \$4 to \$7 in reduced drug-related crimes, criminal justice costs, and theft.’”

“AB 2167 would require courts to consider alternatives to incarceration, including diversion programs, restorative justice, and probation. The bill also states that it is the intent of the Legislature that sentencing in a criminal case be the least restrictive means possible. This bill would still allow for judicial discretion and for judges to have the option to incarcerate when necessary to protect public safety.”

- 5) Argument in Opposition:** According to the *California Association of Highway Patrolmen*, “This bill would require a court to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation, and to use the least restrictive disposition possible. The bill would additionally state that it is the intent of the Legislature that the disposition of any criminal case use the least restrictive means possible.

“Courts already have the option to assign a diversion program, treatment program or other alternatives. However, it is at their discretion to decide the best alternative, which is not always the least restrictive. Each case is unique and some cases require additional sentencing.”

**6) Related Legislation:**

- a) AB 1670 (Bryan), would create the Commission on Alternatives to Incarceration within the California Health and Human Services Agency. AB 1670 is currently pending in the Assembly Appropriations Committee.
- b) AB 1928 (McCarty), authorizes the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated felony crimes. AB 1928 is currently pending in the Assembly Appropriations Committee.

**7) Prior Legislation:**

- a) SB 73 (Weiner), Chapter 537, Statutes of 2021, authorized a court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation could only be granted in the unusual case where the interest of justice would be served.
- b) SB 383 (Cortese), Chapter 603, Statutes of 2021, authorized a court receiving a juvenile transfer case to determine whether an eligible minor is suitable for deferred entry of judgment if the transferring court did not do so and expended the circumstances under

which a minor is eligible for informal supervision.

- c) AB 484 (Jones-Sawyer), Chapter 574, Statutes of 2019, made the imposition of the 180-day confinement condition that is currently required when a defendant is granted probation after being convicted of specified controlled substance offenses permissive rather than mandatory.
- d) AB 1390 (Stone), Chapter 129, Statutes of 2019, expanded the existing youth deferred entry of judgment pilot program to defendants who are 21 years of age or older, but under 25 years of age at the time of the offense with approval of the multidisciplinary team.
- e) SB 394 (Skinner), Chaptered 593, Statutes of 2019, authorized the presiding judge of a superior court, in consultation with the presiding juvenile court judge and criminal court judges and together with the prosecuting entity and the public defender, to create a pretrial diversion program for defendants who are primary caregivers of a child under 18 years of age who are charged with a misdemeanor or a non-serious, non-violent felony, and who are not being placed into diversion for a crime alleged to have been committed against a person for whom the defendant is the primary caregiver.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

A New Way of Life Re-entry Project  
California Attorneys for Criminal Justice  
California Catholic Conference  
California for Safety and Justice  
California Public Defenders Association  
Ella Baker Center for Human Rights  
Essie Justice Group  
Families United to End LWOP (FUEL)  
Fair Chance Project  
Friends Committee on Legislation of California  
Initiate Justice  
Legal Services for Prisoners With Children  
National Association of Social Workers, California Chapter  
Tides Advocacy

### **Opposition**

California Association of Highway Patrolmen

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